Supreme Court, U.S.
FILED
SEP 4 1986
JOSEPH F. SPANIOL, JR.
CLERK

No. 85-999 (4)

# In the Supreme Court of the United States

OCTOBER TERM, 1986

UNITED STATES OF AMERICA, PETITIONER

*v.*

PHILLIP PARADISE, JR., ET AL.

*ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT*

## JOINT APPENDIX

DENNIS N. BALSKE, ESQUIRE
*400 Washington Avenue*
*P.O. Box 4087*
*Montgomery, AL 36101*
*(Counsel for Respondents Paradise, et al.)*

EDWARD L. HARDIN, ESQUIRE
*Hardin & Hollis*
*1825 Morris Avenue*
*Birmingham, AL 35203*
*(Counsel for Defendants in Support of Petitioner)*

JAMES S. WARD
*Corley, Moncus, Bynum & DeBuys*
*2100 16th Avenue South*
*Suite 300*
*Birmingham, AL 35205*
*(Counsel for Defendants/ Intervenors in Support of Petitioner)*

CHARLES FRIED
*Solicitor General*
*Department of Justice*
*Washington, D.C. 20530*
*(202) 633-2217*

**PETITION FOR A WRIT OF CERTIORARI FILED DECEMBER 10, 1985**
**CERTIORARI GRANTED JULY 7, 1986**

1838

## INDEX TO JOINT APPENDIX


| | Document | Date | Page |
|---|---|---|---|
| 1) | District Court Docket Sheet-Civil Action No. 3561-N (Relevant Docket Entries) | 3/15/84 | 1 |
| 2) | Order (enjoining racially discriminatory policies and practices and imposing one-for-one hiring requirement) | 2/10/72 | 23 |
| 3) | Order (enjoining artificial restriction of size of state trooper force) | 8/5/72 | 30 |
| 4) | Proposed Partial Consent Decree and Order (entering decree) | 2/16/79 | 37 |
| 5) | Agreement of Counsel for the Parties | 2/16/79 | 46 |
| 6) | Consent Decree | 8/18/81 | 49 |
| 7) | Plaintiffs' Motion to Enforce the Terms of the February 16, 1979 Partial Consent Decree and the August 18, 1981 Consent Decree | 4/7/83 | 58 |
| 8) | Motion to Intervene | 4/15/83 | 81 |
| 9) | Amendment to Motion to Intervene | 4/18/83 | 96 |
| 10) | Complaint of Intervenors (*lodged 4/15/83; filed 10/28/83) | 4/15/83 | 98 |
| 11) | Order (setting motions to enforce and to intervene for hearing) | 5/3/83 | 114 |
| 12) | Order (granting intervention) | 10/28/83 | 116 |

| | Document | Date | Page |
|---|---|---|---|
| 13) | Order (prohibiting use of defendants' promotion procedure and directing them to submit a new promotion plan) | 10/28/83 | 117 |
| 14) | Proposed Promotion Procedure | 11/10/83 | 125 |
| 15) | Order (granting motion to enforce and imposing one-for-one promotion requirement) | 12/15/83 | 128 |
| 16) | Memorandum Opinion | 12/15/83 | 130 |
| 17) | Order (denying motions to alter or amend judgment) | 1/13/84 | 138 |
| 18) | Statement of Completion of Procedure for Promotion to Rank of Corporal | 6/18/84 | 142 |
| 19) | Motion to Approve Selection Procedure for Promotion to Corporal | 6/18/84 | 144 |
| 20) | Response to Defendant Prescott's Motion to Approve Selection Procedure for Promotion to Corporal | 6/28/84 | 146 |
| 21) | Plaintiffs' Response to Defendants' Motion to Approve Selection Procedure for Promotion to Corporal | 6/29/84 | 151 |
| 22) | Plaintiffs' Response to Intervenor's Objection to Implementation of New Promotion Procedure | 6/29/84 | 155 |
| 23) | Response to Order | 6/29/84 | 157 |
| 24) | Response of the United States to Defendants' Motion to Approve Selection Procedure | 7/2/84 | 159 |

| | Document | Date | Page |
|---|---|---|---|
| 25) | Order | 7/27/84 | 163 |
| 26) | Notice of Appeal | 8/24/84 | 165 |
| 27) | Intervenors Objection to Opposed Corporal Promotion | 9/10/84 | 168 |
| 28) | Motion for Stay | 10/25/84 | 171 |
| 29) | Order | 10/25/84 | 175 |
| 30) | Order | 10/25/84 | 176 |

## RELEVANT DOCKET ENTRIES

| Date | NR | Proceedings |
|---|---|---|
| 1972 | | |
| Jan. 3 | | Complaint filed. Injunctive relief requested. |
| Jan. 12 | | ORDER designating the United States to appear and participate in all proceedings in this action as a party and amicus curiae. (Copies mailed to Gordon Madison, defts. Stanley Frazer and Walter L. Allen; copies handed to U.S. Attorney and Morris Dees; copy also mailed to David Norman.) |
| Jan. 13 | | Temporary Restraining ORDER. Defendants temporarily enjoined and restrained from recruiting, hiring, or making any commitment to hire any additional Alabama State troopers until this Court can conduct a hearing on plaintiff's motion for a preliminary injunction and until this Court can determine the issued involved. (Copies mailed to counsel; copy handed to U.S. Attorney's secretary; copies delivered to Marshal for service on defts.) |
| Feb. 2 | | Defendants' answer to complaint. |
| Feb. 10 | | ORDER/(1) denying defendants' motion to dismiss; (2) enjoining defendants John S. Frazer, as Director, Ala. Personnel Dept. and Walter L. Allen, as Director, Ala. Department of Public Safety, their agents, officers, etc. from engaging in any employment practices, including recruitment, ex- |

| Date | NR | Proceedings |
|---|---|---|
| | | amination, appointment, training, promotion, retention or any other personnel action for the purpose or with the effect of discriminating against any employee, or actual or potential applicant for employment on the ground of race or color; (3) enjoining defendants from failing to hire and permanently employ after the probationary period 1 Negro trooper for each white trooper hired until approximately 25 percent of the Ala. state trooper force is comprised of Negroes; (4) enjoining defendants from conducting any training courses for the purpose of training new troopers until the groups to be given said training courses are comprised of approximately 25 percent black trooper candidates; (5) enjoining defendants from failing to hire supporting personnel for the Dept. of Public Safety in the ratio of 1 Negro for each white until approximately 25 percent of the supporting personnel are black; (6) abrogating eligible and promotional registers heretofore used for the purpose of hiring troopers to the extent necessary to comply with this decree; (7) requiring defendants to assign employees on the basis of their training and ability, without regard to race. Defts. shall advise the public in all advertisements and announcements that they will appoint and employ per- |

| Date | NR | Proceedings |
|---|---|---|
| | | sons on an equal opportunity, merit basis, without discrimination on the ground of race or color. Defts. shall adopt and implement a program of recruitment and advertising which will fully advise the Negro citizens of the State of Ala. of the employment opportunities now available to them with the Ala. Dept. of Public Safety. No commitments of employment given by either of the defts. or any of their agents to any applicant or potential applicant, short of actual hiring prior to 1/13/72, the date the temporary restraining order was entered in this case, shall be given any priority over the hiring ratio set out in decree. Defendants to file within 90 days from this date a written report setting forth in detail the efforts which have been undertaken to recruit and hire black applicants. Costs taxed against defendants in this case. *Jurisdiction retained.* AMENDMENT FILED 8/5/75 and 2/16/79. |
| Mar. 7 | | Defendants' notice of appeal to the U.S. Court of Appeals, Fifth Circuit from the order entered in this Court 2/10/72. (Copies of notice mailed to Morris Dees and Joseph J. Levin, Jr.; U.S. Attorney; Edward W. Wadsworth, Clerk, U.S. Court of Appeals; David L. Norman.) |

| Date | NR | Proceedings |
|---|---|---|
| 1973 | | |
| Jan. 5 | | ORDER that record in this case be supplemented to include all evidence received in case of U.S. v. Frazer, Civil Action No. 2709-N interrogatories and answers, depositions and stipulations of the parties filed in this case since Nov. 12, 1973, and a copy of this order. Attorneys for U.S. ordered to file with Clerk of CCA within 7 days all evidence received by this Court in Civil Action No. 2709–N; Clerk ordered to forward forthwith to Clerk of CCA, the other supplemental materials. (Copies mailed to counsel.) |
| 1974 | | |
| Apr. 22 | | Plaintiffs' motion for further relief. (Referred to Judge Johnson) |
| May 15 | | JUDGMENT of U.S. Court of Appeals (issued as mandate 5/13/74). Judgment of Judgment of district court affirmed; defendant-appellant to pay plaintiff, intervenor-appellee, and plaintiff and amicus curiae-appellee costs on appeal. Certified copy of opinion attached. |
| 1975 | | |
| Aug. 5 | 41 | ORDER denying plaintiffs' motion for further relief insofar as the motion seeks modification of the terms of the Court's order of 2/10/72; further ordered (1) denying Governor George C. Wallace's motion to be dismissed as a party defendant; (2) enjoining defendants George C. Wallace, John |

| Date | NR | Proceedings |
|---|---|---|
| | | S. Frazer, E. C. Dothard, their agents, officers, successors in office, employees and all persons acting in concert or participation with them from taking any action or failing to take any action, which action or inaction results in the artificial restriction of the size of the Alabama state trooper force; (3) continuing the motion for further relief filed 4/22/74, insofar as it seeks an adjudication of the validity of the employment criteria and tests of the Alabama Department of Public Safety until further order of the Court; (4) denying defendants' motion for "Modification and/or Reconsideration of Certain Findings in the Court's Order of January 5, 1974" and (5) directing defendants to file with this Court on or before 1/20/76, a comprehensive report reflecting as of 1/1/76, the number of troopers by race, the number of support personnel by race, the number of troopers and support personnel hired since this order and the number of troopers hired since this order that have achieved permanent status. (Copies mailed to counsel.) AMENDMENT FILED 2/16/79. |
| 1977 | | |
| Sept. 23 | | Plaintiffs' motion for supplemental relief. Referred to Judge Johnson. Exhibit attached. SEE ORDER OF 2/16/79. |

| Date | NR | Proceedings |
|---|---|---|
| 1979 | | |
| Feb. 16 | | Agreement of counsel for the parties relating to promotions to the rank of corporal. Referred to Judge Johnson. |
| Feb. 16 | 50<br>57 | Parties' proposed partial consent decree (referred to Judge Johnson) and ORDER approving said partial consent decree; directing that said decree be implemented in accordance therewith and in accordance with the orders of the Court of 2/10/72 and 8/5/75. (Copies furnished to counsel.) |
| | 58 | SEE AMENDMENT FILED 2/16/79. |
| Feb. 21 | | Defendants' motion to more fully define quota relief or, in the alternative, motion for supplemental relief. Referred to Judge Johnson. Hearing requested. SEE ORDER OF 2/22/79. SEE ORDER 4/13/79. |
| Apr. 13 | 61 | MEMORANDUM. (Copies furnished to counsel.) |
| Apr. 13 | 65 | ORDER denying defendants' motion to define quota relief or, in the alternative, for supplemental relief filed 2/21/79. (Copies furnished to counsel.) |
| 1981 | | |
| Apr. 13 | 66 | Defendants' motion for approval to utilize the Corporal's Promotional Examination along with a Report of a Validation Study prepared by the State of Alabama, Personnel Department and for a hearing on same. Referred to Judge Thompson. |

| Date | NR | Proceedings |
|---|---|---|
| 1981 | | |
| July 20 | 83 | Memorandum brief of plaintiffs and U.S. to the proposed examination for State Trooper Corporal. Referred to Judge Thompson. |
| Aug. 18 | 101 | Consent DECREE and ORDER that the proposed selection procedure for State Trooper Corporal, shall be administered and used as set out in this order. Exhibit attached. (Copies furnished to counsel.) |
| 1983 | | |
| Apr. 7 | 108 | Plaintiffs' motion to enforce the terms of the 2/16/79 partial consent decree the 8/18/81 consent decree. Exhibits attached. Referred to Judge Thompson. |
| Apr. 13 | 129 | ORDER that the other parties file written responses to the plaintiffs' 4/????? motion to enforce the terms of the 2/16/79, partial consent decree and 8/18/81, consent decree. If any of the parties desires to engage in dis??? to present evidence, or for the court to set a briefing schedule on the motion, the party must request the same in writing by 4/29/83; otherwise motion and any responses thereto shall be deemed under submission as of 4/29/83. (Copies mailed to counsel; copy furnished to U.S. Attorney.) |
| Apr. 15 | 130 | Motion of V. E. McClellan, William M. Bailey, D. B. Mansell and Dan Davenport; intervene. Exhibits attached. Referred to Judge Thompson. |

| Date | NR | Proceedings |
|---|---|---|
| Apr. 18 | 145 | Amendment to motion to intervene of V. E. McClellan, William M. Bailey, D. Mansell and Dan Davenport. Referred to Judge Thompson. |
| Apr. 18 | 147 | ORDER setting the motion to intervene filed 4/15/83, for submission, without oral agrument, on 4/29/83; DIRECTING the movants for intervention to file their brief and any evidentiary materials by 4/22/83; DIRECTING the other parties to respond by 4/29/83. (Copies mailed to counsel; copy furnished to U. S. Attorney.) |
| Apr. 26 | 150 | Memorandum of applicants for intervention in support of motion to intervene. |
| Apr. 26 | 166 | Affidavit of Dan Davenport. |
| Apr. 26 | 170 | Affidavit of V. E. McClellan. |
| Apr. 26 | 174 | Affidavit of D. B. Mansell. |
| Apr. 26 | 178 | Affidavit of William M. Bailey. |
| Apr. 26 | 182 | Motion of applicants for intervention for evidentiary hearing or in the alternative request for oral argument. Referred to Judge Thompson. |
| Apr. 29 | 184 | United States' response to motion of V. E. McClellan, et al. to intervene. Referred to Judge Thompson. |
| May 2 | 191 | Defendants' response to plaintiffs' motion to enforce the terms of the 2/16/79 partial consent decree and the 8/18/81 consent decree. Referred to Judge Thompson. |

| Date | NR | Proceedings |
|---|---|---|
| May 5 | 195 | Response of the U.S. to plaintiffs' motion to enforce decrees. |
| May 6 | 269 | Plaintiffs' response to motion to intervene and defendants' request for discovery. Referred to Judge Thompson. |
| May 12 | 282 | Applicants for intervention file objection and response to 5/3/83 order. Referred to Judge Thompson. |
| June 1 | 290 | Defendants' response to plaintiffs' motion to enforce consent decrees. Referred to Judge Thompson. |
| Oct. 28 | 309 | ORDER granting 4/15/83 motion to intervene filed by McClellan, Bailey, Manson and Davenport, to the extent that the movants may participate in these proceedings on a prospective basis only and may not challenge previously entered orders, judgments, and decrees since intervention is untimely as to these denying motion in all other respects. (Copies mailed to counsel and furnished to U.S. Attorney's office.) |
| Oct. 28 | 311 | ORDER (1) that the plaintiffs' 4/7/83 motion to enforce the terms of the 2/???? partial consent decree and the 8/18/81 consent decree, be and it is hereby granted to the extent hereafter set forth; (2) that it is hereby declared the defendants' selection procedure for promotion to corporal has an adverse racial impact and that said selection procedure may not be used |

| Date | NR | Proceedings |
|---|---|---|
| | | by the defendants for promotion; (3) that on or before 11/10/83, the defendants file with the court a plan to promote to corporal, from qualified candidates at least 15 persons in a manner that will not have an adverse racial impact; (4) that on or before 11/18/83, the plaintiffs, the United States and the defendant-intervenors may file any objections and counter-proposals; (5) if by 11/25/83, the plaintiffs, the United States, and the defendants have filed a promotion plan agreed to by all said parties, the issue of corporal promotions shall be deemed submitted for resolution by the court; and (6) if the plaintiffs, the United States and the defendants file an agreed-to promotion plan, the defendant-intervenors are allowed 7 days from the date of filing to file any objections to the plan. (Copies mailed to counsel; furnished to U.S. Attorney.) |
| Oct. 28 | 320 | Complaint in intervention of McClellan, Bailey, Mansell and Davenport. |
| Nov. 3 | 332 | Intervenors' motion to amend or to clarify order allowing intervention. Referred to Judge Thompson. |
| Nov. 10 | 344 | Defendant State of Alabama Department of Public Safety's motion for reconsideration. Exhibits A and B Attached. Referred to Judge Thompson. |

| Date | NR | Proceedings |
|---|---|---|
| Nov. 10 | 356 | Defendant State of Alabama Department of Public Safety's proposed promotion procedure. Referred to Judge Thompson. |
| Nov. 10 | 359 | Defendant State of Alabama Personnel Department's response to 10/28/83 order to submit a plan to promote to Corporal from qualified candidates. Referred to Judge Thompson. |
| Nov. 14 | 365 | Defendant Department of Public Safety's response to defendant-intervenor's motion to amend or to clarify order allowing intervention. |
| Nov. 17 | 382 | Plaintiffs' response to defendants' proposed promotion procedure Exhibits A & B attached. Referred to Judge Thompson. |
| Nov. 17 | 420 | Plaintiffs' response to intervenors' motion to amend. |
| Nov. 18 | 423 | Response of the United States of defendants' proposed promotion procedure. |
| Nov. 21 | 437 | Response of the United States to intervenors' motion to amend or clarify order allowing intervention. |
| Nov. 28 | 441 | Defendant-Intervenors' response to order of 11/4/83. Referred to Judge Thompson. |
| Nov. 28 | 444 | Defendant-Intervenors' response to proposed promotion procedure of defendant Department of Public Safety. Referred to Judge Thompson. |
| Nov. 28 | 450 | Response of personnel defendants to intervenors' motion. Referred to Judge Thompson. |

| Date | NR | Proceedings |
|---|---|---|
| Nov. 30 | 452 | ORDER denying defendants' motion of 10/19/83; denying defendants' 11/10/83 motion for reconsideration; granting the U.S.'s motion for leave to file a response to proposed protective order; granting defendants' 10/19/83 motion for protective order as further set out in order. (Copies mailed to counsel.) |
| Dec. 7 | 454 | ORDER (entered 12/8/83) vacating the 11/30/83 order and entering this order in its place. ORDERED that the defendants' 10/19/83, motion to allow administration of entry-level test be denied; that the defendants' 11/10/83 motion for reconsideration be denied and that the United States' 11/16/83, motion for leave to file response to proposed protective order be granted; that the defendants' 10/19/83 motion for protective order be granted; that counsel for the plaintiffs, the U.S., and defendant-intervenors shall notify the entry-level examination or permit the examination to be used or seen by anyone except in connection with this lawsuit; and that said counsel shall make any use or distribution of the examination designed to or having the probable effect of getting into the hand of those who may take the examination. (Copies mailed to counsel.) |

| Date | NR | Proceedings |
|---|---|---|
| Dec. 7 | 456 | Semi-annual report of the State of Alabama of persons employed by the State; filed by plaintiff. Referred to Judge Thompson. |
| Dec. 9 | 473 | ORDER granting the motion of defendant-intervenors, filed 11/3/83, to amend or clarify order, with leave to the defendant-intervenors to file appropriate motion for class certification pursuant to Fed. R. Civ. P. 23. (Copies mailed to counsel.) |
| Dec. 15 | 474 | MEMORANDUM OPINION. |
| Dec. 15 | 482 | ORDER (1) that the plaintiffs' 4/7/83 motion to enforce the terms of the 2/16/?? partial consent decree and 8/18/81 consent decree be granted to the extent hereafter set forth; (2) that the defendants and their agents and employees and each is hereby enjoined and restrained from failing to promote from this day forward, for each white trooper promoted to a higher rank, one black trooper to the same rank, if there is a black trooper objectively qualified to be promoted to the rank; (3) that the promotion requirement shall remain in effect as to each trooper rank above the entry-level rank until either approximately 25% of the rank is black or the defendants have developed and implemented a promotion plan for the rank which meets the prior orders and |

| Date | NR | Proceedings |
|---|---|---|
| | | decrees of the court and all other relevant legal requirements; (4) that within 35 days from the date of this order the defendants shall submit to the court for the approval a schedule for the development of promotion procedures for all ranks above the entry-level position; (5) that the plaintiff be allowed 21 days from this date to file a request for interim attorney ??? and (6) that all other relief requested by the plaintiffs in their motion not specifically granted be denied. (Copies furnished U.S. Attorney; mail remaining counsel.) |
| Dec. 23 | 487 | The United States' motion to alter or amend judgment of 12/15/83. Referred to Judge Thompson. |
| Dec. 27 | 492 | Defendants' motion to alter or amend judgment of 12/15/83 and to stay order, and request for hearing. Referred to Judge Thompson. |
| Dec. 27 | 503 | Motion of the defendant-intervenors to alter or amend the judgment of 12/15/83 and to stay its enforcement. Affidavit of William P. Cobb, II attached. Referred to Judge Thompson. |
| Dec. 27 | 509 | Defendant Personnel Director of the State of Alabama's motion for reconsideration of the court's order of 12/15/83. Referred to Judge Thompson. |

| Date | NR | Proceedings |
|---|---|---|
| Dec. 30 | 557 | Defendant-Intervenors' supplement or amendment to motion to alter or amend judgment of 12/15/83 and to stay its enforcement. Referred to Judge Thompson. |
| Dec. 30 | 562 | Plaintiffs' response to defendants' motions for reconsideration, to alter or remand judgment, and to stay enforcement of the 12/15/83 order. |
| 1984 | | |
| Jan. 6 | 569 | Defendant Alabama Department of Public Safety's response to 12/15/83 court order. |
| Jan. 6 | 571 | The United States' motion for stay of this court's order of 12/15/83. Referred to Judge Thompson. |
| Jan. 6 | 574 | Defendant-intervenors' motion for stay of enforcement of the Order rendered 12/15/83. Referred to Judge Thompson. |
| Jan. 13 | 578 | ORDER that the following motions be and they are hereby denied: defendant-intervenors' 1/6/84 motion to stay; to the United States' 1/6/84 motion to stay defendant Prescott, et al.'s 12/27/83 motion to alter or amend judgment and ??? of order; defendant Alabama Personnel Director's 12/27/83 motion for reconsideration; defendant-intervenors' 12/27 and 12/30/83 motions to alter or amend and to stay enforcement; and |

| Date | NR | Proceedings |
|---|---|---|
| | | the United States' 12/23/83 motion to alter or amend judgment. (Copies furnished U.S. Attorney and mailed to remaining counsel.) |
| Jan. 19 | 582 | Personnel defendant's response to Court Order of 12/15/83 |
| Jan. 23 | 585 | ORDER directing all parties to show cause within 14 days from this date as to why the schedule for development of promotion procedures for all ranks above entry-level filed 1/6/84, should not be approved by the court. (Copies furnished to U.S. Attorney; mailed to remaining counsel.) |
| Jan. 24 | 595 | Defendant, the Department of Public Safety's Notice of Appeal to the U.S. Court of Appeals, 11th Circuit from the Order granting plaintiffs' 4/7/83 motion in part and enjoining and restraining defendants from failing to promote one black trooper for each white trooper promoted to a higher rank entered 12/15/83, and all other orders relating thereto, and the Order denying all motions filed by defendants to amend, alter, or stay the 12/15/83 order entered 1/13/84. [Copies mailed to: John Carroll, Dennis Balske, Cynthia Drabek, Charles Graddick, Richard Meadows, Rosa Davis, Edward L. Hardin, Jr., Ray Acton, Ken Wallis, James S. Ward—furnished to Judge Thompson, John Bell & W.H. |

| Date | NR | Proceedings |
|---|---|---|
| | | Harris, Jr.—certified to: Clerk, USCA w/docket entries—appeal information sheet furnished Edward L. Hardin, Jr. |
| Jan. 27 | 599 | Defendants-Intervenors, V.E. McClellan, William M. Bailey, D.B. Mansell and Dan Davenport's Notice of Appeal to the U.S. Court of Appeals, 11th Circuit from the Order entered 12/15/83 granting plaintiffs' motion to enforce the terms of 2/16/79 partial consent decree and the 8/18/81 consent decree and further enjoining and restraining the defendants from failing to promote from 12/15/83, forward, for each white trooper promoted to a high rank, one black trooper to the same rank, if there is a black trooper qualified to be promoted to the rank, until approximately 25% of all rank are black, and from the Order denying these defendants' motion to alter, amend or stay the 12/15/83 Order entered 1/13/84. [Copies mailed to: John Carroll, Dennis Balske, Cynthia Drabek, Charles Graddick, Richard Meadows, Rosa Davis, Edward L. Hardin, Jr., Ray Acton, Ken Wallis, James S. Ward—furnished to: Judge Thompson, John Bell & W.H. Harris, Jr.—certified to Clerk, USCA w/docket entries—appeal information sheet furnished James S. Ward.] |

| Date | NR | Proceedings |
|---|---|---|
| Feb. 3 | 603 | Plaintiff United States of America's response to schedule for development of promotion procedures. |
| Feb. 6 | 610 | Intervenors' response to the order of 1/23/84. Referred to Judge Thompson. |
| Feb. 8 | 627 | ORDER (1) that the schedule for development of promotion procedures for all above entry-level, filed 2/6/84, by defendant Department of Public Safety adopted 1/19/84 by defendant Personnel Department, be approved; and that defendants be and they are hereby DIRECTED to develop and submit to the promotion procedures in accordance with said schedule; (2) that defendant intervenors' 2/6/84 motion for temporary retention of record in district be and it is hereby granted; (3) that the plaintiffs' 2/6/84 motion for to dismiss, etc., be and it is hereby granted; and that the plaintiffs' motion for order to enforce consent decree, etc., and motion for preliminary injunction be and they are dismissed; and (4) that the plaintiffs' 2/6/84 supplemental motion for interim attorney fees, be set for submission, with oral argument, on 2/17/84. Any briefs, evidentiary materials, and request for a hearing must be filed by said date. (Copies furnished U.S. Attorney and mailed to remaining counsel.) (Certified copy mailed to Clerk, USCA docket entries.) |

| Date | NR | Proceedings |
|---|---|---|
| Mar. 13 | 3 | Plaintiff, United States' Notice of Appeal to the U.S. Court of Appeals, 11th Circuit, from the Order entered 12/15/83; and from the Order entered 1/13/84, denying plaintiff's motion to alter or amend judgment entered 12/23/83. (Copies mailed to: John Carroll, Cynthia Drabek, Richard Meadows, Ray Acton, Ken Wallis, James S. Ward, Edward L. Hardin, Jr.—furnished to: Ken Vines along with appeal information sheet and W.H. Harris Jr.—certified to USCA w/orders appealed from and docket entries.) |
| June 19 | 9 | Defendant Prescott's statement of completion of procedure for promotion to rank of corporal. Referred to Judge Thompson. |
| June 19 | 12 | Defendant Prescott's motion to approve selection procedure for promotion to corporal. Referred to Judge Thompson. |
| June 27 | 19 | Plaintiff United States' response to defendants' motion to approve selection procedure. |
| June 28 | 27 | Defendant-intervenors' response to defendant Prescott's motion to approve selection procedure for promotion to corporal. Referred to Judge Thompson. |
| June 29 | 33 | Plaintiffs' response to Defendants' motion to approve selection procedure for promotion to corporal. Referred to Judge Thompson. |

| Date | NR | Proceedings |
|---|---|---|
| June 29 | 38 | Plaintiffs' response to intervenors' objection to implementation of new promotion procedure. (Copy of brief attached.) Referred to Judge Thompson. |
| July 2 | 101 | Defendant Personnel Board of State of Alabama response to court order of reference defendant Prescott's motion to approve selection procedure for promotion to corporal. Referred to Judge Thompson. |
| July 27 | 115 | ORDER that defendants are permitted to make promotions as requested; shall make selections from the group as set forth in order; that the one-for-one quota shall not apply in this instance; that the parties may proceed with discovery; the court shall conduct further proceedings to determine if further review would be necessary. (Copies mailed to counsel.) |
| Aug. 16 | 118 | Defendant Byron Prescott's motion to approve selection procedure for promotion to sergeant. Referred to Judge Thompson. |
| Aug. 16 | 121 | Defendant Byron Prescott's statement of completion of procedure for promotion to sergeant. Referred to Judge Thompson. |
| Aug. 24 | 126 | Defendants-Intervenors, V. E. McCellan, William M. Bailey, D. B. Mansell and Dan Davenport's Notice of Appeal from the Order entered |

| Date | NR | Proceedings |
|---|---|---|
| | | 7/27/84. (Certified copy to Clerk, USCA along w/certified copies of docket entries and order appealed from; copies mailed to James S. Ward [furnished appeal information sheet], Cynthia Drabek, Richard N. Meadows, Dennis N. Balske, Edward L. Hardin, Jr., Ray Acton, Ken Wallis; furnished Ken Vines and Court Reporter, Dub Harris) |
| Sept. 10 | | Defendant Prescott's response to court order requesting summary of selection procedure for promotion to sergeant. Attachments. [SEALED per Court's instructions.] |
| Sept. 14 | 140 | Intervenors' objection to proposed corporal promotion. |
| Oct. 25 | 168 | Defendant-intervenors's motion for stay of order entered on 7/27/84. Referred to Judge Thompson. |
| Oct. 25 | 173 | ORDER denying the defendant-intervenors' 10/25/84 motion to stay. (Copies mailed to counsel; furnished to John Bell.) |
| Oct. 25 | 174 | ORDER that 1) subject to the limitations set forth in this order, defendants Prescott, et al., are permitted to make promotions to State Trooper Sergeant from the group of 13 persons designated "most qualified" pursuant to the selection procedure described in defendants' 9/10/84, submission; 2) defendant Prescott, et al, shall select |

| Date | NR | Proceedings |
|---|---|---|
| | | sergeants from the "most qualified" group in a non-discriminatory manner and shall provide actual notice of such promotions to counsel for the parties not less than 5 working days prior to the effective date of such promotions as further set out in this order; 3) that the one-for-one quota for sergeant promotions, ordered 12/15/83, shall not apply to the use of this selection procedure as described in paragraphs 1 and 2 of this order; 4) that the court shall conduct further proceedings upon motion of a party to determine whether the results of future administrations of the selection procedure presented by defendants Prescott, et al., or a similar procedure, may be used to select State Trooper Sergeants without further review. Until further order of this Court, defendants shall make no promotions to State Trooper Sergeant positions other than from the group they have identified as the 13 "most qualified" candidates. (Copies mailed to counsel; furnished U.S. Attorney.) |
| Dec. 11 | 182 | Defendant Prescott's motion to promote eight lieutenants and three captains. Referred to Judge Thompson. |
| Dec. 26 | 201 | ORDER granting the defendants' 12/11/84, motion to promote eight lieutenants and three captains. (Copies mailed to counsel; furnished to U.S. Attorney.) |

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

---

CIVIL ACTION NO. 3561-N

NAACP, PLAINTIFF, PHILLIP PARADISE, JR., INDIVIDUALLY AND ON BEHALF OF THE CLASS SIMILARLY SITUATED, INTERVENING PLAINTIFF,

UNITED STATES OF AMERICA, PLAINTIFF AND AMICUS CURIAE,

*v.*

WALTER L. ALLEN, AS DIRECTOR OF THE ALABAMA DEPARTMENT OF PUBLIC SAFETY, HIS AGENTS, ASSIGNS, AND SUCCESSORS IN OFFICE; STANLEY FRAZER, AS PERSONNEL DIRECTOR, PERSONNEL DEPT., STATE OF ALABAMA, HIS AGENTS, ASSIGNS, AND SUCCESSORS IN OFFICE, DEFENDANTS.

Civil Action No. 2709-N

UNITED STATES OF AMERICA BY JOHN N. MITCHELL, ATTORNEY GENERAL, PLAINTIFF,

*v.*

JOHN S. FRAZER, AS DIRECTOR, ALABAMA PERSONNEL DEPARTMENT, ET AL., DEFENDANTS.

---

**ORDER**

This action was originally brought by the National Association for the Advancement of Colored People on behalf of its members and all similarly situated Negroes in the State of Alabama. The complaint alleged that defendant Allen as Director of the Alabama Department of Public Safety and defendant Frazer as Personnel Director

of the Alabama Personnel Department have followed a continuous and pervasive pattern and practice of excluding Negroes from employment in the Department of Public Safety. At the commencement of the hearing in this case, a motion by Phillip Paradise, Jr., to intervene as a party plaintiff, individually and on behalf of the class similarly situated, was granted.

The Department of Public Safety has two major components: the state troopers and those secretaries, clerks and others who comprise the supporting personnel. There are two other groups closely associated with the department: the trooper cadets and auxiliary troopers. The cadets are men too young to qualify as regular troopers but who receive training from the department toward becoming troopers. The auxiliary force is a group of unpaid volunteers which performs trooper functions under department direction in time of emergency and which is selected on the basis of a recommendation.

Because the agency's supporting staff is essentially identical to those personnel who were the focus of this Court's order in *United States* v. *Frazer,* 317 F.Supp. 1079 (M.D. Ala. 1970) and because these employees are obtained from the defendant Frazer's department, this Court has determined that the appropriate relief as to these positions will be treated as a motion for supplemental relief under the *Frazer* decision.

The state troopers, however, are a different matter. This group is a distinct, specialized force which is unlike the relatively fungible secretaries and clerks who populate every office. For example, the troopers have their own height, weight and age requirements, maintain a separate testing program and require an oral interview. The trooper force has an extensive and specialized training program.

For these reasons, it is clear that the state trooper aspect of this case justifies the filing and prosecution of separate litigation and requires separate adjudication.

The defendants have raised an objection to the NAACP's right to bring this suit. It was, however, the uncontroverted testimony of the association's state president, Mr. Thomas Reed, that some of its members have sought jobs with the department and have been refused. It is well established that the NAACP has standing to assert the rights of its members. *NAACP* v. *Button,* 371 U.S. 415, 428 (1963); *Louisiana ex rel. Gremillion* v. *NAACP,* 366 U.S. 293, 296 (1961); *NAACP* v. *Alabama ex rel. Patterson,* 357 U.S. 449, 458 (1958). Any standing question in this case was further obviated by the intervention of plaintiff Paradise. His testimony at the hearing for a temporary restraining order was undisputed that he was refused a trooper application. He contends that the refusal was racially motivated. Accordingly, defendants' motion to dismiss is due to be denied.

Plaintiffs have shown without contradiction that the defendants have engaged in a blatant and continuous pattern and practice of discrimination in hiring in the Alabama Department of Public Safety, both as to troopers and supporting personnel. In the thirty-seven-year history of the patrol there has never been a black trooper and the only Negroes ever employed by the department have been nonmerit system laborers. This unexplained and unexplainable discriminatory conduct by state officials is unquestionably a violation of the Fourteenth Amendment. *Burton* v. *Wilmington Parking Authority,* 365 U.S. 715 (1961); *Brown* v. *Board of Education,* 347 U.S. 483 (1954); *United States* v. *Frazer, supra.*

Under such circumstances as exist in these cases, the courts have the authority and the duty not only to order an end to discriminatory practices, but also to correct and eliminate the present effects of past discrimination.

*Hutchins* v. *United States Industries, Inc.*, 428 F.2d 303, 310 (5th Cir. 1970); *Local 53, Asbestos Workers* v. *Vogler*, 407 F.2d 1047, 1052 (5th Cir. 1969). The racial discrimination in this instance has so permeated the Department of Public Safety's employment policies that both mandatory and prohibitory injunctive relief are necessary to end these discriminatory practices and to make some substantial progress toward eliminating their effects.

While further discrimination will be enjoined, this Court is not inclined to order new tests or testing procedures. This Court recognizes that *Griggs* v. *Duke Power Co.*, 401 U.S. 424 (1971) is authority for the view that if an employment practice which operates to exclude Negroes is unrelated to job performance, the practice is prohibited. Yet there are persuasive reasons for avoiding the imposition of new procedures. First, the Government's selection technique expert, John E. Furcon, testified that it would require a minimum of six months to properly analyze the job of state trooper and compile proper selection methods. The plaintiffs' expert, Dr. Richard S. Barrett, estimated that the process may take as much as four or five years, particularly in light of the fact that there are presently no black troopers. Thus, it would in all likelihood take several years to implement the selection procedures which these experts envision.

Second, Dr. Barrett described Mr. Furcon's cost estimate of $40,000 for the completion of such an analysis as perhaps too low. Imposition of such a study would be an undue burden upon the state. Moreover, in light of the affirmative relief which this Court will require, primary concern over the testing procedures is unnecessary. This is not to say that the state may not undertake some revision of its selection methods if it desires to do so. In fact, the testimony reflects that changes are appropriate and necessary. This Court will simply not order it at this time.

This particular aspect of the state trooper case will be reserved pending receipt of implementation reports to be filed by the defendants.

Accordingly, it is the ORDER, JUDGMENT and DECREE of this Court:

I. That defendants' motion to dismiss be and the same is hereby denied.

II. That the defendants John S. Frazer, as Director, Alabama Personnel Department and Walter L. Allen, as Director, Alabama Department of Public Safety, their agents, officers, successors in office, employees and all persons acting in concert or participation with them, be and they are hereby enjoined from engaging in any employment practices, including recruitment, examination, appointment, training, promotion, retention or any other personnel action, for the purpose or with the effect of discriminating against any employee, or actual or potential applicant for employment, on the ground of race or color.

III. It is further ORDERED that the defendants be and they are each hereby enjoined from failing to hire and permanently employ after the probationary period, one Negro trooper for each white trooper hired until approximately twenty-five (25) percent of the Alabama state trooper force is comprised of Negroes. This injunction applies to the cadet and auxiliary troopers as well as to the regular troopers. It shall be the responsibility of the Department of Public Safety and the Personnel Department to find and hire the necessary qualified black troopers.

IV. It is further ORDERED that the defendants be and they are hereby enjoined from conducting any training courses for the purpose of training new troopers until

the groups to be given said training courses are comprised of approximately twenty-five (25) percent black trooper candidates.

V. It is further ORDERED that the defendants be and they are each hereby permanently enjoined from failing to hire supporting personnel for the Department of Public Safety in the ratio of one Negro for each white until approximately twenty-five (25) percent of the supporting personnel are black. The decree in *United States* v. *Frazer,* 317 F.Supp. 1079 (M.D. Ala. 1970) is hereby amended insofar as the Department of Public Safety's employment practices are concerned.

VI. It is further ORDERED that eligible and promotional registers heretofore used for the purpose of hiring troopers be and they are hereby abrogated to the extent necessary to comply with this decree.

VII. It is further ORDERED that:

1. The defendants shall assign employees on the basis of their training and ability, without regard to race. Negro employees shall not be assigned to serve exclusively or predominantly Negro clientele.

2. The defendants shall advise the public in all advertisements and announcements that they will appoint and employ persons on an equal opportunity, merit basis, without discrimination on the ground of race or color. In such public announcements, the defendants shall advise potential and actual applicants and employees of their right to be free from discrimination. Said announcements shall be made throughout the State of Alabama within thirty days from the date of this order.

3. The defendants shall adopt and implement a program of recruitment and advertising which will fully advise the Negro citizens of the State of Alabama of the employment opportunities now available to them with the

Alabama Department of Public Safety. The defendants shall institute regular recruitment visits to predominantly Negro schools (vocational, high and college) throughout the State of Alabama, such visits to be made in person by appropriate officials of the Alabama Department of Public Safety.

4. No commitments of employment given by either of the defendants or any of their agents to any applicant or potential applicant, short of actual hiring prior to January 13, 1972, the date the temporary restraining order was entered in the state trooper case, shall be given any priority over the hiring ratio set out in this decree. The present hiring lists, compiled as a result of the discriminatory practices, may be used to hire the white troopers, white trooper cadets and white supporting personnel. New lists, however, must be compiled and utilized for the black troopers, black trooper cadets and black supporting personnel.

5. The defendants shall file through their counsel with this Court within ninety days from the date of this decree a written report setting forth in detail the efforts which have been undertaken to recruit and hire black applicants. The report shall also include the number of vacancies filled among the state troopers, the auxiliary troopers, the cadets and the supporting personnel of the Department of Public Safety during this period and the number of each race hired into each of these groups.

VIII. It is further ORDERED that the costs of this proceeding be and they are hereby taxed to the defendants in Civil Action No. 3561-N, for which execution may issue.

The Court retains jurisdiction over these cases.

Done, this the 10th day of February, 1972.

[SIGNATURE]

United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

---

CIVIL ACTION NO. 3561-N

PHILLIP PARADISE, JR.,
INDIVIDUALLY AND ON BEHALF OF THE CLASS SIMILARLY SITUATED, PLAINTIFF,

UNITED STATES OF AMERICA, PLAINTIFF AND AMICUS CURIAE,

*v.*

E. C. DOTHARD, AS DIRECTOR OF THE ALABAMA DEPARTMENT OF PUBLIC SAFETY, ETC., ET AL., DEFENDANTS.

---

**ORDER**

This action was originally brought by the National Association for the Advancement of Colored People on behalf of its members and all similarly situated Negroes in the State of Alabama. In its order of February 10, 1972, this Court found that the original defendants had "engaged in a blatant and continuous pattern and practice of discrimination in hiring in the Alabama Department of Public Safety, both as to troopers and supporting personnel."[1] In order to end these practices and correct their effects, the Court ordered mandatory and prohibitory injunctive relief. After an interim order of this Court, entered January 5, 1974, the original order was affirmed by the Court of Appeals.[2]

---

[1] *NAACP* v. *Allen*, 340 F. Supp. 703, 705 (M.D. Ala. 1972).

[2] 493 F.2d 614 (5th Cir. 1974).

The current phase of the case arises from a motion for further relief filed by plaintiffs April 22, 1974. A hearing on this motion was held on September 26, 1974. The hearing focused on two principal issues: the allegation that the defendants had artifically restricted the size of the trooper force in order to frustrate the Court's hiring order, and the problem of "black attrition" in the force—the disproportionate failure of blacks hired to achieve permanent trooper status.[3]

The then-Director of the Department of Public Safety testified at the hearing that at the time of the Court's 1972 order there was a critical shortage of troopers and that at least 100 additional troopers were required immediately. The current Director testified that when he took office the need for troopers was at least as great as before. In the 1971 session of the Alabama legislature the administration introduced a bill which would have funded 100 new trooper positions. The evidence is clear that at the time of the Court's hiring order and at all material times thereafter the responsible state officials recognized the need for substantially increasing the size of the trooper force.

In the eight years prior to the Court's 1972 order, the department had hired on the average 40 troopers per year. In the three years immediately preceding the order, the average was over 50. In the two and one-half years following the Court's order, approximately 70 new troopers were hired, of whom 56 were permanently employed. This post-order level of hiring was insufficient to cover normal attrition.

---

[3] Plaintiffs' motion for further relief was directed in part to the question of validation of the department's employee selection procedures and tests. By stipulation of the parties, resolution of the validation issue was continued pending the development of new selection procedures.

The Department of Public Safety has two sources of state funds: unconditional appropriations and appropriations conditioned on the state of the general fund and the approval of the Governor. The evidence reflects that the department traditionally spends less than its full unconditional appropriation and that in the five years preceding the 1972 order in this case the approximate average unexpended amounts in the major budget categories were these: salaries—$50,000; equipment purchases—$7,200; other expenses—$121,300. For the fiscal year in which the hiring order was entered and the following fiscal year, the approximate average unexpended amounts were these: salaries—$170,400; equipment purchases—$164,700; other expenses—$461,700. These unexpended amounts revert to the general fund and are not recoverable by the department. These figures establish that the reversions in each category at least tripled after the entry of the hiring order and that during those two years the department had unconditional funds available to cover both the salaries and ancillary expenses associated with the hiring of additional troopers.[4] The evidence further reflects that, contrary to general state policy, appropriations within the "salaries" category were, in the years following the 1972 order, shifted from troopers to support personnel.[5]

On February 10, 1972, the Alabama legislature conditionally appropriated 1.25 million dollars to the Department of Public Safety for fiscal 1971-72 and the same amount for fiscal 1972-73—a total of 2.5 million dollars.[6]

---

[4] The salary reversion for the fiscal year ending September 30, 1974, was approximately $479,100.

[5] From 1964 to 1971, an average of approximately 83 percent of the department's salary appropriation was spent on troopers and cadets. This figure fell to 78 percent in fiscal 1971-72 and 75 percent in fiscal 1972-73.

[6] Act No. 254, 1971 Ala. Acts 4519. This is the final, substantially modified version of the administration's "hundred trooper bill."

The appropriation Act provided that part of the funds be used for an across-the-board salary increase, but the balance could be used in any fashion. The language of the statute by implication authorized the use of the funds for the hiring of new troopers. Release of the funds was conditioned on the state of the general fund and the approval of the Governor. The closing balances for fiscal 1971-72 and 1972-73 were approximately $12 million and $17 million.[7] None of the conditional appropriation for 1971-72 was utilized; $785,000 of the second year's funds were released.[8]

The evidence outlined above establishes and this Court now finds that, at the time of and in the years following the Court's 1972 order, the administration and the heads of the Department of Public Safety perceived a need for additional troopers—a need characterized as critical; that there were appropriated and available to the defendants funds in excess of $3 million, a substantial portion of which could have been used for salaries and ancillary expenses for new troopers; and that this money was not spent for the critically needed additional troopers but went unspent or was diverted to other uses. These findings, when combined with the considerable testimony regarding the defendants' reluctance to implement the Court's remedial order by placing black troopers on the state's highways, necessitate the conclusion that the defendants

---

[7] The State Budget Officer, James V. Jordan, testified that it is sound fiscal practice to end the fiscal year with approximately a 10 percent "cushion" of unexpended general fund revenues. The evidence indicates that this cushion would have existed even if the entire $2.5 million had been spent.

[8] Mr. Jordan also testified to the percentage of conditionally appropriated funds actually released. For 1971-72, the figure was 35 percent overall and 0 percent for the department; in 1972-73, 65 percent overall and 62 percent for the department.

have, for the purpose of frustrating or delaying full relief to the plaintiff class, artificially restricted the size of the trooper force and the number of new troopers hired.

Between February 10, 1972, and the September 26, 1974, hearing in this case, the Department of Public Safety hired 40 black troopers, of whom 27 remained on the force at the time of the hearing.[9] During the same period, the department hired 29 white troopers, all of whom remained on the force. Evidence was presented at the hearing which supports a finding that the high attrition rate among blacks resulted from the selection of other than the best qualified blacks from the eligibility rosters, some social and official discrimination against blacks at the trooper training academy, preferential treatment of whites in some aspects of training and testing, and discipline of blacks harsher than that given whites for similar misconduct while on the force. Most of these incidents of discrimination against new black troopers occurred during the early phases of the implementation of the Court's hiring order. The Court sees no reason at this time to modify the hiring order in this regard but reiterates and emphasizes the pertinent portion of that order:

> It is further ORDERED that the defendants be and they are each hereby enjoined from failing to *hire and permanently employ after the probationary period,* one Negro trooper for each white trooper hired until approximately twenty-five (25) percent of the Alabama state trooper force is comprised of Negroes.

By order dated August 7, 1974, George C. Wallace, Governor of the State of Alabama, was made a party defendant in this case. The Court subsequently denied the Governor's motion seeking his dismissal as a defendant. In

---

[9] As of July 16, 1975, the Attorney General for the State of Alabama advised that the state now has 40 black troopers.

his briefs filed in this case, the Governor again questions the necessity of his inclusion as a defendant. The evidence presented at the September 26, 1974, hearing demonstrates clearly that the Governor is a necessary party if the Court's remedial order is to be fully implemented. The Governor, as noted above, has the ultimate authority for releasing conditionally appropriated funds. In addition, it has been the practice of the directors of the Department of Public Safety to consult with the Governor prior to hiring substantial numbers of new troopers, and in practice the Governor possesses and sometimes exercises the authority to deny such requests for additional troopers.

Upon consideration of the findings and conclusions discussed above, it is ORDERED that the motion for further relief, filed by plaintiffs April 22, 1974, be and is hereby denied insofar as the motion seeks modification of the terms of the Court's order of February 10, 1972, in this case.

It is further ORDERED that:

1. Governor George C. Wallace's motion to be dismissed as a party defendant be and the same is hereby denied.

2. Defendants George C. Wallace, as Governor, State of Alabama; John S. Frazer, as Director, Alabama Personnel Department; and E. C. Dothard, as Director, Alabama Department of Public Safety; their agents, officers, successors in office, employees, and all persons acting in concert or participation with them be and each is hereby ENJOINED from taking any action, or failing to take any action, which action or inaction results in the artificial restriction of the size of the Alabama state trooper force, for the purpose of or which has the effect of delaying or frustrating the achievement of the hiring goal specified in paragraph III of this Court's order in this case dated February 10, 1972.

3. The motion for further relief filed April 22, 1974, insofar as it seeks an adjudication of the validity of the employment criteria and tests of the Alabama Department of Public Safety, be and is hereby continued until further order of the Court.

4. Defendants' motion for "Modification and/or Reconsideration of Certain Findings in the Court's Order of January 5, 1974," be and the same is hereby denied.

5. Defendants file with the Court on or before January 20, 1976, a comprehensive report reflecting, as of January 1, 1976, the number of troopers by race, the number of support personnel by race, the number of troopers and support personnel hired since this order and the number of troopers hired since this order that have achieved permanent status.

Done, this the 5th day of August, 1975.

[SIGNATURE]

United State District Judge

# IN THE DISTRICT COURT OF THE UNITED STATES FOR THE MIDDLE DISTRICT OF ALABAMA NORTHERN DIVISION

---

## CIVIL ACTION NO. 3561-N

PHILLIP PARADISE, JR., INDIVIDUALLY AND ON BEHALF OF THE CLASS SIMILARLY SITUATED, PLAINTIFFS,

UNITED STATES OF AMERICA, PLAINTIFF AND AMICUS CURIAE,

CLIFTON BROWN, PLAINTIFF-INTERVENOR,

*v.*

M. L. HILYER, AS DIRECTOR OF THE ALABAMA DEPARTMENT OF PUBLIC SAFETY, ETC., ET AL., DEFENDANTS.

---

### PROPOSAL PARTIAL CONSENT DECREES

Come the parties, plaintiff Phillip Paradise, Jr., individually and on behalf of the class similarly situated, plaintiff and *amicus curiae* the United States of America (hereinafter referred to collectively as "plaintiffs") and defendants, M. L. Hilyer, as Director of the Alabama Department of Public Safety, his agents, assigns, etc., and Stanley Frazer, as Director of the Alabama Department of Personnel, his agents, assigns, etc., and enter into a consent agreement as to Plaintiffs' Motion for Supplemental Relief as follows:

### 1. STATEMENT OF PURPOSE

Defendants recognize the continuing effect of the orders issued by this Court on February 10, 1972 and August 5, 1975. Defendants will have as an objective within the Department of Public Safety an employment and promotion system that is racially neutral. In this respect, defendants and their officers, agents and employees, successors

and all persons acting in concert with them or any of them, in the performance of their official functions, agree not to engage in any act or practice which has a purpose or effect of unlawfully discriminating against blacks. In addition, defendants agree not to engage in any act or practice which discriminates on the basis of race in hiring, promotion, upgrading, training, assignment, discharge or otherwise discriminate against any employee of, or any applicant, or potential applicant for employment with respect to compensation, terms and conditions or privileges of employment because of such individual's race. Defendants agree that any time after entry of this partial consent decree the plaintiffs may apply to this Court for an order which would enforce the terms of the partial consent decree or apply for any other relief which may be appropriate.

## II. NEW DISCIPLINARY REVIEW PROCEDURES

Defendants will distribute the attached Notice of Disciplinary Review Procedures to all Department employees of the trooper rank. In this way, all troopers will be apprised of the availability of procedures for them to obtain a review of certain disciplinaries contained within their files, including oral and written counseling, oral reprimands, written reprimands, suspensions, transfers and pay raise denials, which said troopers contend were the result of racial discrimination. These procedures are fully described in the attached Notice of Disciplinary Review Procedures and are fully incorporated herein and agreed to by the parties.

This notice will be distributed to all employees of the trooper rank no later than thirty (30) days from the date of this decree. Plaintiffs and defendants will submit names of the persons they have selected for the Disclipinary Review Board within thirty (30) days of the date of this decree,

and they request the Court to select the third Board member at its earliest convenience. Board members who are not members of the Department of Public Safety will be compensated at a reasonable rate by the Department for Board service.

### III. RACE RELATIONS PROGRAM

In order to further their objective of a racially neutral employment and promotion system, defendants will establish a comprehensive Equal Employment Opportunity (EEO) Program. This program will be designed to provide a vehicle for airing grievances concerning allegations of racially disparate treatment and to further and promote race relations within the Department. Defendants agree to appoint an employee of the Department of Public Safety as the Department-wide EEO officer. This officer will have responsibility for supervising the Equal Employment Opportunity Program within the Department and monitoring Departmental compliance with this and other court decrees. This officer will also conduct a class or series of classes concerning race relations for each state trooper academy class and for each supervisory in-service training program held by the Department. This officer will also be responsible for instituting an EEO grievance procedure, which will provide all troopers with access to specially trained EEO officers when such troopers have complaints of a racial nature. This grievance procedure will be implemented as an addition to present grievance procedures. The Department-wide EEO officers will make recommendations to the Director concerning resolutions of these racial grievances.

Defendants also agree to appoint an EEO officer for each state trooper district in the State and to provide him with special training in the field of race relations. These

district EEO officers will process racial grievances and forward them to the Department-wide EEO officer for resolution, and will promote and further race relations within each individual district.

Defendants will, within 60 days, publish a comprehensive description of the EEO program and distribute it to all state trooper personnel, along with a letter from the Director encouraging all personnel to utilize the program.

## IV. PROMOTIONS

A. The defendants agree to have as an objective the utilization of a promotion procedure which is fair to all applicants and which promotion procedure when used either for screening or ranking will have little or no adverse impact upon blacks seeking promotion to corporal (hereinafter referred to as the "objective" or "above-stated objective.") In accordance with that objective defendants agree to utilize a promotion procedure which is in conformity with the 1978 *Uniform Guidelines of Selection Procedures*, 43 Fed. Reg. 38290, and which, in addition, when used either for screening or ranking will have little or no adverse impact on blacks seeking promotion to corporal.

B. In accordance with the above-stated objective defendants agree to develop for the position of corporal a promotion procedure which (1) would be developed by defendants no later than one year from the signing of this Consent Decree, (2) would be submitted upon completion of the formulation of the promotion procedure to counsel for plaintiffs who would have at least 60 days to review the promotion procedure and would be able to request from defendants any information relevant to the proposed promotion procedure, and (3) would be submitted upon completion of plaintiffs' review to this court for approval on the basis of the above-stated objective.

In the interim, defendants agree to utilize the state merit system for all promotions to corporal, during which time defendants will promote at least three black troopers to the rank of corporal.

Upon completion of validation of a new procedure for promotion to corporal, defendants, in accordance with the above-stated objective, agree to begin validation of a promotional procedure for the position of sergeant and, in turn, for the positions of lieutenant, captain and major.

## V. TERMINATIONS

Defendants agree to review all terminations of state troopers made from August 5, 1975 through March 1, 1979. If the Department finds that any termination resulted in whole or in part from racial discrimination, each such person shall be offered re-employment at the level at which he was terminated, unless such termination occurred prior to graduation from the trooper Academy, in which case such person shall be required to complete the entire Academy training course.

A report of this review will be presented to counsel for plaintiffs as soon as practicable, but not later than April 15, 1979. All reinstatements will be made by April 15, 1979, with the exception of any individual terminated during his Academy training, who shall be reinstated at the next Academy training session. Plaintiffs except from this portion of the decree with respect to class member Charles Gregory Potts. Plaintiffs contend that Mr. Potts should be reinstated irrespective of the review conducted by defendants.

## VI. ATTORNEY FEES AND COSTS

The defendants hereby agree to pay all court costs and related expenses incurred by plaintiffs, as well as reasonable attorneys fees to counsel for the plaintiffs.

/s/ EDWARD L. HARDIN, JR.
Edward L. Hardin, Jr.
*Attorney for Defendants*

/s/ DENNIS N. BALSKE
Dennis N. Balske
John L. Carroll
*Attorneys for Plaintiffs*

/s/ GERALD S. HARTMAN
Gerald S. Hartmann
*Attorney for United States of America*

TO: All Department Employees Holding the Rank of State Trooper
FROM: M. L. Hilyer, Director

**NOTICE OF DISCIPLINARY REVIEW PROCEDURES**

Judge Frank M. Johnson, Jr. has approved of a new procedure whereby the Department of Public Safety will review certain disciplinary actions taken by the Department against its employees holding the rank of state trooper, which disciplines were given between August 5, 1975 and March 1, 1979.

All troopers are hereby given permission to review their 201 files. Any trooper who, after reviewing his file, feels that any discipline given him during this period, including oral and written counselings, oral and written reprimands, suspensions, transfers and pay denials, was given him as a result of racial discrimination, shall give notice thereof to the Department in writing. This written notice *shall* specify the dates and nature of the disciplinary which the trooper contends was racially motivated, as well as the name(s) of the Department personnel whose conduct the trooper contends was racially motivated.

Each claim so presented will then be assigned a date, at which time each trooper will be given an opportunity to present his contentions to an impartial review board. This board will consist of three persons, as follows: one private citizen chosen by Judge Frank M. Johnson, Jr.; one person chosen by the attorneys representing the plaintiff class; and one person chosen by the Department of Public Safety. Troopers presenting such claims may, on their own, obtain an attorney, who will be given an opportunity to participate in the hearing. The Department may respond to such claims through an attorney of its choice.

Attorneys for both sides will be afforded an opportunity to present opening statements, to examine and cross-examine witnesses, to introduce documentary evidence and to give closing arguments. Although the hearing will be conducted in a trial-like manner, formal rules of evidence will not be followed.

If after hearing both sides, a majority of the Board finds the claim to be established by a preponderance of the evidence, any and all records relating to such disciplinaries shall be removed from all three of said trooper's personnel files and given to the trooper. No copies shall be retained by the Department. If the Board finds that a trooper has not established his claim, no action will be taken. Neither side has a right to appeal from the determination of the Board.

All written request for review in accordance with this notice must be submitted within sixty (60) days of the date of this notice. The Department gives its assurance that no adverse action will be taken against troopers who utilize these procedures.

_____

M.L. Hilyer

_____

Date

**ORDER**

Upon consideration of the foregoing proposed partial consent decree executed and presented by all parties in this case, and with the specific understanding by this Court that the orders made and entered herein on February 10, 1972, and August 5, 1975, continue in full force and effect, it is the ORDER, JUDGMENT and DECREE of this Court that said partial consent decree be and is hereby approved and the parties are hereby ORDERED to implement same in accordance therewith and in accordance with the orders of this Court of February 10, 1972, and August 5, 1975.

Done, this the 16th day of February, 1979.

[SIGNATURE]
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

---

CIVIL ACTION NO. 3561-N

PHILLIP PARADISE, JR., INDIVIDUALLY AND ON BEHALF OF THE CLASS SIMILARLY SITUATED, PLAINTIFFS,

UNITED STATES OF AMERICA, PLAINTIFF AND AMICUS CURIAE,

CLIFTON BROWN, PLAINTIFF-INTERVENOR,

*v.*

M. L. HILYER, AS DIRECTOR OF THE ALABAMA DEPARTMENT OF PUBLIC SAFETY, ETC., ET AL., DEFENDANTS.

---

**AGREEMENT OF COUNSEL FOR THE PARTIES**

Defendants hereby agree to utilize the following promotion procedure for all promotions to the rank of corporal during the period in which a new promotion procedure is being validated. Defendants further agree to move to incorporate this letter into the attached Consent Decree on March 1, 1979.

1. Defendants will administer a written examination to all troopers seeking promotion to the rank of corporal as soon as practicable (the same examination that was given in 1975).

2. The examination will be considered in conjunction with other factors, as follows:

a) Examination – 40%
b) Supervisory interviews – 40%
c) Seniority – 10%
d) Last three evaluations – 10%

3. When these categories are combined, a list of results will be compiled, a copy of which will be provided to plaintiffs (this list will include each trooper's scores in all four categories).

4. If three or more blacks score in the upper fifty percentile, at least three blacks will be promoted to corporal as described below. If less than three black troopers score in the upper fifty percentile, no promotions to corporal will be made from this list during the interim period, and defendants will develop an alternate procedure which will insure the promotion of at least three black troopers during the interim period.

5. During the interim period, defendants will promote at least three, but not more than ten, troopers to the rank of corporal. The actual number of promotions will be determined by the number of vacancies which open during the interim period.

6. If four or more blacks score in the upper fifty percentile, the procedure, will work as follows:

a) The first three vacancies will be filled by blacks scoring in the upper fifty percentile;

b) The next three available vacancies will be filled by those with the highest rankings on the list;

c) If a seventh vacancy becomes available, provided that vacancies four through six were filled by whites, it will be filled by a fourth black who scored in the upper fifty percentile; and

d) If any other vacancies after the seventh vacancy become available, they will be filled by the troopers ranking highest on the list, irrespective of race.

/s/ EDWARD L. HARDIN, JR.
Edward L. Hardin, Jr.
*Attorney for Defendants*

/s/ DENNIS N. BALSKE
Dennis N. Balske
John L. Carroll
*Attorneys for Plaintiffs*

/s/ GERALD S. HARTMAN
Gerald S. Hartmann
*Attorney for United States of America*

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

---

CIVIL ACTION NO. 3561-N

PHILLIP PARADISE, JR., INDIVIDUALLY AND ON BEHALF OF THE CLASS SIMILARLY SITUATED, PLAINTIFFS,

UNITED STATES OF AMERICA, PLAINTIFF AND AMICUS CURIAE,

*v.*

JERRY SHOEMAKER, AS DIRECTOR OF THE ALABAMA DEPARTMENT OF PUBLIC SAFETY, ETC., ET AL., DEFENDANTS.

---

**CONSENT DECREE**

On February 16, 1979, this Court entered a Partial Consent Decee in resolution of certain issues raised in Plaintiffs' Motion for Supplemental Relief. Part IV of the Partial Consent Decree provides in part as follows:

> The defendants agree to have as an objective the utilization of a promotion procedure which is fair to all applicants and which promotion procedure when used either for screening or ranking will have little or no adverse impact on blacks seeking promotion to corporal . . . In accordance with that objective defendants agree to utilize a promotion procedure which is in conformity with the 1978 *Uniform Guidelines [on Employee] Selection Procedures*, 43 Fed. Reg. 38290, and which, in addition, when used either for screening or ranking will have little or no adverse impact on blacks seeking promotion to corporal.

Defendants have submitted to plaintiffs Paradise, et al., and the United States [hereinafter referred to collectively as plaintiffs] and to the Court a proposed selection proce-

dure for State Trooper Corporal positions and a validity study for the written examination component of that selection procedure. Defendants have presented no validity evidence in support of the components of the proposed selection procedure other than the written examination. Plaintiffs and defendants disagree whether the proposed selection procedure is in conformity with the *Uniform Guidelines on Employee Selection Procedures*, 43 Fed. Reg. 38290, 28 C.F.R. Sec. 50.14 (1978) [hereinafter, *Uniform Guidelines*]. Because the selection procedure has not yet been administered, the adverse impact of the selection procedure, if any, is not known.

Defendants recognize their obligation under the Partial Consent Decree to utilize a selection procedure which has little or no adverse impact on blacks seeking promotion to corporal. The parties agree that it would be in the best interest of all parties to avoid unnecessary litigation and to put a selection procedure for State Trooper Corporals in place as soon as possible. Accordingly, the parties have entered into this Consent Decree governing the use of the proposed selection procedure for promotion of State Troopers to State Trooper Corporal positions.

NOW, THEREFORE, IT IS HEREBY ORDERED that the proposed selection procedure for State Trooper Corporal, submitted to this Court May 21, 1981, shall be administered and used as follows:

1. The proposed selection procedure shall be administered and scored as set out in defendants' letter to plaintiffs and this Court dated May 21, 1981 and in the proposed selection procedure and validation report accompanying that letter. Each of the four components of the procedure shall comprise the percentage of the total score for the selection procedure that is set out in defendants' May 21, 1981 letter.

2. Any State Trooper with permanent status for at least 24 months as of October 15, 1981 shall be permitted to take the written examination for State Trooper Cor-

poral. It is recognized that the selection procedure provides for a score for length of service such that thirty months' service at the time the selection procedure is administered shall equal seventy points and sixty months' service (or more) shall equal one hundred points. Accordingly, one point more than seventy shall be awarded to each applicant for each month of service more than thirty months, up to a maximum of one hundred points.

3. Defendants shall compile a list of candidates for promotion for State Trooper Corporal positions based upon the composite numerical scores of applicants on the selection procedure. In determining eligibility, defendants may apply the standards for length of service set out in the proposed selection procedure. Under this Decree, defendants shall not be required to promote any State Trooper who does not have at least 30 months' service as a State Trooper at the time of the promotion, provided that the length of service requirement is applied consistently. Defendants shall provide a copy of this list, identifying each applicant by race, to plaintiffs.

4. The list of candidates for promotion shall be reviewed to determine whether the selection procedure has an adverse impact against black applicants. Adverse impact shall be determined by reference to the *Uniform Guidelines*, by comparing the numbers (by race) of applicants with the numbers (by race) of persons passing the procedure and by comparing the numbers (by race) of applicants with the number (by race) of persons ranking high enough on the selection procedure to be promoted if promotions were made in rank order from the list of eligible candidates. For purposes of this Decree, "applicants" shall include all persons who take the written examination for State Trooper Corporal. Adverse impact shall be determined for each of the following groups of "persons ranking high enough on the selection procedure to be promoted if promotions were made in rank order:" (a) the first eight

corporal promotions, which are expected to be awarded as soon as selections based upon the proposed selection procedure are approved by the Court; (b) all corporal promotions expected within one year of the administration of the selection procedure, based upon the good faith estimate of the Department of Public Safety; and (c) all corporal promotions expected during the life of the list of eligible candidates, based upon the good faith estimate of the Department of Public Safety as to the length of time the list will be used and the Department's anticipated staffing needs during that time. Adverse impact shall be determined by reference to Section 4D of the *Uniform Guidelines, supra*, and the answer to question 12 of the *Questions and Answers to Clarify and Provide a Common Interpretation of the Uniform Guidelines on Employee Selection Procedures*, 44 Fed.Reg. 11996, March 2, 1979.

5. If the selection procedure has little or no adverse impact against black applicants, selections shall be made in rank order from the list described in paragraph 2 of this Decree. Whether or not the selection procedure has "little or no adverse impact" will be measured by the "four-fifths rule" set forth in Section 4 D of the *Uniform Guidelines, supra*. If the parties cannot agree whether the selection procedure has an adverse impact, the matter shall be submitted to the Court for resolution. No promotions to State Trooper Corporal positions shall be made pending resolution of the question of adverse impact.

6. If the parties agree, or the Court finds, that the selection procedure has an adverse impact, promotions shall be made in a manner that does not result in adverse impact for the initial group of promotions or cumulatively during use of the procedure. Defendants shall submit to plaintiffs their proposal for making promotions in conformity with the Partial Consent Decree and with this Decree.

If the parties do not agree on the method for making promotions, the matter shall be submitted to the Court for resolution. No promotions to State Trooper Corporal positions shall be made until the parties have agreed in writing or the Court has ruled upon the method to be used for making promotions with little or no adverse impact.

7. If the selection procedure has an adverse impact against blacks seeking promotion to corporal, defendants shall examine the results of each component of the selection procedure to identify the source(s) of the adverse impact and shall revise the procedure so as to avoid adverse impact in the future. Defendants shall provide plaintiffs with data showing the impact of each component of the selection procedure and an item-by-item analysis of the impact of the written test. The parties shall attempt to agree upon modifications in the selection procedure for future administrations. If the parties are unable to agree upon the procedure to be used after the first administration of the selection procedure and the method of using that procedure, the matter shall be submitted to the Court for resolution.

ORDERED this 18th day of August, 1981.

[SIGNATURE]

United States District Judge

AGREED AND CONSENTED TO:

/s/ CYNTHIA DRABEK
Cynthia Drabek
*Attorneys for Plaintiff*
*United States of America*

/s/ DENNIS N. BALSKE
Dennis N. Balske
*Attorney for plaintiffs*
*Paradise, et al.*

/s/ LEON KELLY, JR.
Leon Kelly, Jr.
*Attorney for Defendants*

LAW OFFICE OF
EDWARD L. HARDIN, JR., P.C.
A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW
1025 NORRIS AVENUE
BIRMINGHAM, AL 35203
(203) 220-2679

May 21, 1981

Hon. John Carroll
Southern Proverty Law Center
1001 S. Hull Street
Montgomery, Alabama 36101

Re: *Paradise* v. *Shoemaker*
U.S. District Court of Alabama
Case No. 3561-N

Dear John:

As per the Court's order of May 16, I am enclosing to you one copy of each of the following:

1. Proposed Examination of State Trooper Corporal;
2. Alabama Merit System Report of Validation Study State Trooper Corporal;
3. Alabama Department of Public Safety Service Rating Form;
4. Procedure for Evaluating Length of Service State Trooper Corporal;
5. Supervisory Promotional Evaluation State Trooper Corporal Form;
6. Definitions of Evaluation Factors State Trooper Corporal;

7. Promotional Examination Rating Form (Defines terms used in form described in #5 above);
8. Information and Guides Supervisory Evaluation State Trooper Corporal.

Our proposed promotional procedure accords the following weights to the above factors:

| | |
|---|---|
| 1. Written test | 60% |
| 2. Length of Service | 10% |
| 3. Supervisory Evaluation | 20% |
| 4. Service Ratings | 10% |

The Service Ratings score to be used in the above procedure would be the average of the candidate's three most recent service ratings.

It is my understanding that we have agreed that our production of this material relieves the Defendant of the obligation to answer the Interrogatories and Request for Production filed by the Southern Poverty Law Center on April 16, and that, should you have any questions after your examination of the material we are producing today, you will pursue the answers to those questions thru depositions or additional interrogatories. Please inform me immediately if I have misunderstood our agreement on this matter.

Regarding any questions you might have, if you will convey them to me informally first via telephone or letter, it may be that I can get them answered for you without the necessity of formal discovery proceedings, thereby expediting this whole matter.

If I can be of further assistance, please feel free to call me.

Your truly,

/s/ BUDDY
Leon (Buddy) Kelly, Jr.

LKjr/jws
Encl.

cc: Honorable Myron Thompson
U.S. District Judge
Mr. Tommy Flowers
State of Alabama Personnel Department

IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF ALABAMA NORTHERN DIVISION

CIVIL ACTION NO. 3561-N

PHILLIP PARADISE, JR., INDIVIDUALLY AND ON BEHALF OF THE CLASS SIMILARLY SITUATED, PLAINTIFFS,

UNITED STATES OF AMERICA, PLAINTIFF AND AMICUS CURIAE,

*v.*

JERRY SHOEMAKER, AS DIRECTOR OF THE ALABAMA DEPARTMENT OF PUBLIC SAFETY, ETC., ET AL., DEFENDANTS.

**PLAINTIFFS' MOTION TO ENFORCE THE TERMS OF THE FEBRUARY 16, 1979 PARTIAL CONSENT DECREE AND THE AUGUST 18, 1981 CONSENT DECREE**

Plaintiffs, by the undersigned counsel, respectfully move the Court for an order enforcing the terms of the February 16, 1979 Partial Consent Decree and the August 18, 1981 Consent Decree. Specifically, plaintiffs seek an order requiring defendant:

(1) to implement "a promotion procedure which is fair to all applicants and which promotion procedure when used either for screening or ranking will have little or no adverse impact upon blacks seeking promotion to corporal." See Partial Consent Decree of February 16, 1979, p.4 § IV(A).

(2) to develop and implement a new procedure for promotion to the positions of sergeant, lieutenant, captain and major, which will have little or no adverse impact upon blacks seeking promotion to these positions. See *id.* at § B.

(3) to promote qualified blacks to the corporal position at a rate that does not result in adverse impact and which is within the spirit of this Court's previous orders and the parties' consent decrees. See Consent Decree of August 18, 1981, p.4 ¶ 6.

(4) to pay reasonable attorney's fees to plaintiffs' counsel in this matter. The following paragraphs disclose the reasons why this Court should grant plaintiffs' request.

### A. History of this Litigation

On February 10, 1972, the Court found that the Alabama Department of Public Safety had "engaged in a blatant and continuous pattern and practice of discrimination in hiring. . . ." *NAACP v. Allen*, 340 F.Supp. 703, 705 (M.D.Ala. 1972). The Court ordered defendants to hire one black trooper for each white trooper hired "until approximately twenty-five (25) percent of the Alabama state trooper force is comprised of Negroes." *Id.* at 706. This order was affirmed on appeal and, in 1975, restated emphatically in granting plaintiffs' motion for supplemental relief.

On February 16, 1979, a partial consent decree was approved by the Court, following the second reopening of the case by plaintiffs. This decree required, *inter alia*, that defendants institute "a promotion procedure which is in conformity with the 1978 *Uniform Guidelines of Selection Procedure*, 43 Fed. Reg. 38290, and which, in addition, when used either for screening or ranking will have little or no adverse impact on blacks seeking promotion to corporal." See Decree at p.4, § IV(A). It gave defendants one year to accomplish this objective, after which defendants were "to begin validation of a promotional procedure for the position of sergeant and, in turn, for the positions of lieutenant, captain and major." *Id.* § IV(B).

On April 9, 1981, the defendants moved the Court to approve its newly developed "Corporal's Promotional Examination." Plaintiffs objected to it on the ground that it did not conform to the requirements of the *Uniform Guidelines,* but in view of the defendants' expression of an urgent need for more corporals, eventually entered into the August 18, 1981 Consent Decree. This Decree permitted defendants to utilize the protested promotional procedure, but required that the results by reviewed to determine whether they adversely impacted black applicants prior to the making of any promotions. The Decree further provided that if the new procedure adversely impacted black candidates: (1) "promotions shall be made in a manner that does not result in adverse impact;" (2) "[d]efendants shall submit to plaintiffs their proposal for making promotions in conformity with the Partial Consent Decree and with this Decree;" and (3) "[i]f the parties do not agree on the method for making promotions, the matter shall be submitted to the Court for resolution." See Consent Decree of August 18, 1981, p.4, ¶6.

Finally, in the event of adverse impact, the Decree requires defendants to "examine the results of each component of the selection procedure to identify the source(s) of the adverse impact and . . . revise the procedure so as to avoid adverse impact in the future." According to the Decree, defendants must provide this data to plaintiffs, whereafter the parties shall attempt to agree upon modifications. In the event of disagreement, "the matter shall be submitted to the Court for resolution." *Id.* p.5, ¶7.

**B. Factual Developments**

The new selection procedure unquestionably adversely impacted black applicants. Two hundred sixty-two

troopers applied for promotion to the rank of corporal. Black applicants were ranked as follows: 96, 100, 121, 130, 132A, 137, 144, 154, 157, 161, 163, 165, 169, 183, 191, 193, 194, 195, 197, 204, 205, 206, 210, 211, 212, 213, 218, 220, 221, 223, 224, 226, 228, 229, 230, 231, 232, 234, 236, 238, 241, 243, 244, 246, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262. See Promotion Register, attached hereto as Exhibit 1. Whites held the top 95 positions, whereas blacks held the bottom 14 positions. Of the 59 blacks who applied, only 4 ranked in the top half, and they were at the bottom of the top half (#'s 96, 100, 121 and 130).

In apparent recognition of the adverse impact of this register, defendants have recently offered to promote black applicants at a rate of 20% (1 of every 5 promotions will be black).[1] Plaintiffs have rejected this offer. Defendants have not "revise[d] the procedure so as to avoid adverse impact in the future" and have not "provide[d] plaintiffs with data showing the impact of each component of the selection procedure and an item-by-item analysis of the impact of the written test." See August 18, 1981 Decree at p.5, ¶7.

Thus, no blacks (or whites) have been promoted to corporal in the last four years. There is no valid promotion procedure in place for promotions to corporal, sergeant, lieutenant, captain or major. Under the terms of the 1979 Partial Consent Decree and the 1981 Consent Decree, this Court must now decide: (1) what percentage of the forthcoming 18-20 promotions to corporal should be black; (2) when to require defendants to implement a valid procedure for promotions to corporal; and (3) when to require defendants to implement valid procedures for promotions to sergeant, lieutenant, captain and major.

---

[1] Defendants stated that they need to promote approximately 18 to 20 troopers to the rank of corporal.

### C. Plaintiffs' Position

Plaintiffs submit that blacks should be promoted to corporal at the same rate at which they have been hired, 1 for 1, until such time as the defendants implement a valid promotional procedure. Such an order will serve two purposes: (1) it will encourage defendants to develop a valid promotional procedure as soon as possible; and (2) it will help to alleviate the gross underrepresentation of blacks in the supervisory ranks of the Department.

At the present time there are four black corporals. All four were promoted in 1979 under the terms of the Partial Consent Decree. There are 67 corporals. Thus, blacks comprise 6% of the corporals at this time. Assuming the Department promotes 20 troopers to the rank of corporal, blacks will comprise 16% of the corporals if plaintiffs' 1 for 1 suggestion is implemented, whereas they will only comprise 9.2% if defendant's 1 for 5 plan is followed.[2]

Plaintiffs' request is much more in line with the Court's previous orders than is defendants' plan. The ultimate goal of the Court's orders is a force that is 25% black. At the present time, according to defendants, the force is approximately 22-23% black. However, due to defendants' reluctance to promote its black troopers, all but four of these troopers hold the lowest trooper rank. If the Department is ever to be truly integrated, approximately 25% of its force at every rank should be black. A requirement that defendants promote 10 black of the next 20 corporals, thereby raising black representation in the corporal rank from 6% to 16% is both a reasonable and necessary[3] step to the attainment of this Court's stated goal.

---

[2] After 20 promotions there will be a total of 87 corporals. Under Plaintiffs' plan, there would be 14 black corporals, whereas under defendants' plan, only 8 corporals would be black.

[3] It would perhaps not be necessary if the defendants had developed their own valid promotion procedure as required by the 1979 Decree. It is defendants' perennial non-compliance that necessitates this action.

If the Court has any hesitation to order this relief, it need look no further than Judge Johnson's Order and Memorandum of April 13, 1979. There, the Court rejected the defendants' request for an amendment to the original order changing the requirement for black employment from 25% of the trooper force to 25% of entry-level troopers. Judge Johnson's reasoning fits the instant situation. It is reproduced here with the hope that the Court will restate it in an order granting plaintiffs' present request:

> In 1972, defendants were not just found guilty of discriminating against blacks in hiring to entry-level positions. The Court found that in thirty-seven years there had never been a black trooper at any rank. One continuing effect of that discrimination is that, as of November 1, 1978, out of 232 state troopers at the rank of corporal or above, *there is still not one black*. The quota fashioned by the Court provides an impetus to promote blacks into those positions. To focus only on the entry-level positions would be to ignore that past discrimination by the Department was pervasive, that its effects persist, and that they are manifest. As the Fifth Circuit has recognized, the order in this case does not seek to grant proportional representation in public employment to the black citizens of Alabama. *NAACP* v. *Allen*, 493 F.2d at 621. The order in this case is but the necessary remedy for an intolerable wrong.

It has been four years since Judge Johnson wrote these words. Yet the only change in the makeup of the Department was the promotion of four blacks to Corporal as mandated by the 1979 Partial Consent Decree. Not only has the Department failed to promote any of its black troopers, but it had done nothing to insure that its black troopers will ever play a truly representative role in the operation of the Department. No valid promotion

mechanism has yet been developed by which they can begin moving from the lowest rank, trooper, toward the highest rank, major, even though blacks have been employed in the Department for eleven years.

In order to insure that blacks finally gain the opportunity to move toward positions of responsibility within the Department, the Court should order defendants: (1) to immediately promote 18 to 20 employees to the corporal position, depending on need, on a 1 for 1 basis; (2) to develop and implement a valid promotional procedure for the corporal's position within one year;[4] to develop and implement valid promotional procedures for sergeant, lieutenant, captain and major within two years;[5] and to pay plaintiffs' counsel reasonable attorneys fees for the prosecution of this action.[6]

Respectfully submitted,

/s/ DENNIS N. BALSKE

Dennis N. Balske
John L. Carroll
*1001 S. Hull Street*
*P.O. Box 2087*
*Montgomery, AL 36103-2087*
*Attorneys for Plaintiffs*

---

[4] In order to insure compliance, certain procedural safeguards should be included, such as open discovery to plaintiffs' counsel, a deadline for production of the finished product to plaintiffs' counsel, etc. Moreover, the Court should order that all future necessary promotions to corporal be made on a 1 for 1 basis until the Court has approved a valid promotional procedure.

[5] The procedural safeguards discussed in n.4 should be included, and the Court should order that beginning two years from the entry of its order, all promotions to sergeant, lieutenant, captain and major be made on 1 for 1 basis if a valid procedure for promotions, approved by the Court, is not in place.

[6] Bryon Prescott was recently appointed by Governor Wallace to replace defendant Shoemaker. His name should be substituted for that of defendant Shoemaker in future pleadings and orders.

**CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing have been served upon Ed Hardin and Cynthia Drabek by U.S. first class mail, postage prepaid, this 7th day of April, 1983.

/s/ DENNIS N. BALSKE
*Attorney for Plaintiffs*

STATE OF ALABAMA
Personnel Department
402 State Administrative Building
Montgomery, Alabama 36130-2301

December 30, 1981

**MEMORANDUM**

TO: Ms. Cynthia Drabek
Mr. Edward L. Hardin
Mr. Dennis Balske
Mr. Frank Ussery

FRANK: Thomas G. Flowers, Chief
Recruitment and Examination

SUBJECT: *Enclosed Register*

Enclosed for your review is a computer listing of names, grades, sex/color, and rank of individuals on the promotional register for State Trooper Corporal as a result of the examination administered October 24, 1981, in accordance with Judge Thompson's order.

The sex/color code should be interpreted as follows:

1. White Male
2. White Female
3. Black Male
4. Black Female
5. Other Male
6. Other Female

TGF/brh
Enclosure

Exhibit 1

STATE OF ALABAMA
PERSONNEL DEPARTMENT
EXAMINATION REGISTER CARDS
DECEMBER 30, 1981

| Name | Class Code | Grade | V.P. | Age | Sex & Color | Rank | Option |
|---|---|---|---|---|---|---|---|
| Parsons, Gerald R. | 7222 | 96.79 | | 31 | 1 | 001 | |
| Johnson, Lindon, C. | 7222 | 96.00 | | 32 | 1 | 002 | |
| Smith, Jimmie W. | 7222 | 95.79 | | 41 | 1 | 003 | |
| Cox, James F. | 7222 | 95.77 | | 34 | 5 | 004 | |
| Cawyer, Larry D. | 7222 | 95.66 | | 38 | 1 | 005 | |
| Abrett, James H. | 7222 | 95.65 | | 32 | 1 | 006 | |
| Luther, Curtis W. | 7222 | 95.64 | | 30 | 1 | 007 | |
| Wolfe, Steven P. | 7222 | 95.61 | | 34 | 1 | 008 | |
| Hall, Danny B. | 7222 | 95.54 | | 31 | 1 | 009 | |
| Davis, Puger W. | 7222 | 95.51 | | 40 | 1 | 010 | |
| Sanderson, Roy L. | 7222 | 95.46 | | 30 | 1 | 011 | |
| Yates, Joseph L. | 7222 | 95.45 | | 31 | 1 | 012 | |
| Livingston, Donald L. | 7222 | 95.44 | | 40 | 1 | 013 | |
| Legg, John M. | 7222 | 95.40 | | 36 | 1 | 014 | |

| Name | Class Code | Grade | V.P. | Age | Sex & Color | Rank | Option |
|---|---|---|---|---|---|---|---|
| Sumja, Roy G. | 7222 | 95.36 | | 32 | 1 | 015 | |
| Mansell, Donald B. | 7222 | 95.30 | | 33 | 1 | 016 | |
| Bailey, William M. | 7222 | 95.20 | | 35 | 1 | 017 | |
| Kipp, Philip H. Jr. | 7222 | 95.09 | | 40 | 1 | 018 | |
| Sides, Frederick G. | 7222 | 94.99 | | 40 | 1 | 019 | |
| Hulak, Michael G. | 7222 | 94.89 | | 32 | 1 | 020 | |
| Conrad, David J. | 7222 | 94.76 | | 34 | 1 | 021 | |
| Duncan, Marvin B. | 7222 | 94.62 | | 34 | 1 | 022 | |
| Kelley, Wilburn L. | 7222 | 94.48 | | 29 | 1 | 023 | |
| Taylor, Gerald R. | 7222 | 94.48 | | 32 | 1 | 023 | |
| Cheatham, Tommy W. | 7222 | 94.46 | | 35 | 1 | 025 | |
| Yance, John E. | 7222 | 94.45 | | 38 | 1 | 026 | |
| Goree, Donald E. | 7222 | 94.42 | | 33 | 1 | 027 | |
| Atwell, Donald H. | 7222 | 94.33 | | 34 | 1 | 028 | |
| Thompson, Harold | 7222 | 94.32 | | 31 | 1 | 029 | |
| Branum, W. Albert | 7222 | 94.31 | | 46 | 1 | 030 | |
| Condrey Kenneth H. | 7222 | 94.25 | | 30 | 1 | 031 | |
| Jordan, Wiley O. | 7222 | 94.19 | | 34 | 1 | 032 | |
| Woody, Robert A. | 7222 | 94.11 | | 33 | 1 | 033 | |

| Name | Class Code | Grade | V.P. | Age | Sex & Color | Rank | Option |
|---|---|---|---|---|---|---|---|
| Ward, James S. | 7222 | 94.08 | | 41 | 1 | 034 | |
| Wright, Curtis A. | 7222 | 94.08 | | 32 | 1 | 034 | |
| Taylor, Thomas G. | 7222 | 94.06 | | 32 | 1 | 036 | |
| Warlick, Arthur H. | 7222 | 93.98 | | 46 | 1 | 037 | |
| Scheer, Robert S. | 7222 | 93.92 | | 34 | 1 | 038 | |
| Pouncey, James E. | 7222 | 93.90 | | 31 | 1 | 039 | |
| Bell, Jack O. Jr | 7222 | 93.88 | | 42 | 1 | 040 | |
| McElvaine Cecil A. | 7222 | 93.85 | | 32 | 1 | 041 | |
| Rhegness, William L. | 7222 | 93.81 | | 34 | 1 | 042 | |
| Steward, Rober V. | 7222 | 93.78 | | 46 | 1 | 043 | |
| Smith, Seaborn A. Jr. | 7222 | 93.71 | | 40 | 1 | 044 | |
| Smith, Richard M. | 7222 | 93.53 | | 38 | 1 | 045 | |
| Ruye, Marvin J. III | 7222 | 93.51 | | 33 | 1 | 046 | |
| Silveira, Steven H. | 7222 | 93.48 | | 35 | 1 | 047 | |
| McClellan Victor E. | 7222 | 93.46 | | 40 | 1 | 048 | |
| Tucker, Donald H. | 7222 | 93.40 | | 30 | 1 | 049 | |
| Green, Roy R. | 7222 | 93.37 | | 30 | 1 | 050 | |
| Roberts, Sanders P. | 7222 | 93.36 | | 40 | 1 | 051 | |
| Strickland, Elree M. | 7222 | 93.32 | | 33 | 1 | 052 | |

| Name | Class Code | Grade | V.P. | Age | Sex & Color | Rank | Option |
|---|---|---|---|---|---|---|---|
| Halcomb, Philip W. | 7222 | 93.30 | | 32 | 1 | 053 | |
| Brock, Thomas L. | 7222 | 93.28 | | 32 | 1 | 054 | |
| Yates, Alfred M. | 7222 | 93.23 | | 31 | 1 | 054 | |
| Neal, William A. | 7222 | 93.24 | | 31 | 1 | 056 | |
| Davenport, Henry D. | 7222 | 93.23 | | 37 | 1 | 057 | |
| Galin, Frederick C. | 7222 | 93.20 | | 34 | 1 | 058 | |
| Carson, Harold L. | 7222 | 93.18 | | 48 | 1 | 059 | |
| Hamlet, Thomas L. | 7222 | 93.16 | | 33 | 1 | 060 | |
| Elliott, Jerry W. | 7222 | 93.15 | | 31 | 1 | 061 | |
| Arrington, Loyd C. | 7222 | 93.12 | | 34 | 1 | 062 | |
| Small, Gene P. | 7222 | 93.07 | | 28 | 1 | 063 | |
| Sutton, Cary P. | 7222 | 93.06 | | 34 | 1 | 064 | |
| Cribbs, Ronnie | 7222 | 93.04 | | 33 | 1 | 065 | |
| Womack, Williams H. | 7222 | 93.01 | | 40 | 1 | 066 | |
| Jackson, Bob M. | 7222 | 92.98 | | 33 | 1 | 067 | |
| Robbins, Kermit V. | 7222 | 92.94 | | 35 | 1 | 068 | |
| Atwell, Jerry R. | 7222 | 92.90 | | 29 | 1 | 069 | |
| Reid, Johnny R. | 7222 | 92.85 | | 34 | 1 | 070 | |
| Fox, Gary L. | 7222 | 92.83 | | 35 | 1 | 071 | |

| Name | Class Code | Grade | V.P. | Age | Sex & Color | Rank | Option |
|---|---|---|---|---|---|---|---|
| Cox, Robert J. | 7222 | 92.82 | | 44 | 1 | 072 | |
| Johnson, James W. | 7222 | 92.81 | | 43 | 1 | 073 | |
| Williams, Don A. | 7222 | 92.77 | | 33 | 1 | 074 | |
| Maschi, Joseph P. | 7222 | 92.72 | | 29 | 1 | 075 | |
| Tucker, Donald G. | 7222 | 92.65 | | 36 | 1 | 076 | |
| Kearley, Harry N. | 7222 | 92.60 | | 32 | 1 | 077 | |
| Bibb, Wiley L. | 7222 | 92.55 | | 30 | 1 | 078 | |
| Cook, Abner C. | 7222 | 92.54 | | 52 | 1 | 079 | |
| Brown, Cliffton L. | 7222 | 92.51 | | 32 | 3 | 080 | |
| Strength, Freddie L. | 7222 | 92.49 | | 32 | 1 | 081 | |
| Willis, Willie | 7222 | 92.49 | | 47 | 1 | 081 | |
| Barnett, Michael E. | 7222 | 92.43 | | 34 | 1 | 083 | |
| Brzezinski, Joseph | 7222 | 92.42 | | 34 | 1 | 084 | |
| Hassett, George H. | 7222 | 92.35 | | 36 | 1 | 085 | |
| Gorman, Robert W. | 7222 | 92.32 | | 34 | 1 | 086 | |
| Harrison, Robert A. | 7222 | 92.31 | | 36 | 1 | 087 | |
| Odom, Edward L. | 7222 | 92.30 | | 34 | 1 | 088 | |
| Phelps, William J. | 7222 | 92.27 | | 43 | 1 | 089 | |
| Peevy, Mark D. | 7222 | 92.24 | | 36 | 1 | 089A | |

| Name | Class Code | Grade | V.P. | Age | Sex & Color | Rank | Option |
|---|---|---|---|---|---|---|---|
| Cottingham, Jerry F. | 7222 | 92.22 | | 40 | 1 | 090 | |
| Pridmore, Marvin L. | 7222 | 92.17 | | 42 | 1 | 091 | |
| Slayton, Charles F. | 7222 | 92.13 | | 34 | 1 | 092 | |
| Williams, Larry | 7222 | 92.12 | | 39 | 1 | 093 | |
| Callihan, Brent L. | 7222 | 92.11 | | 28 | 1 | 094 | |
| Hampton, Leon | 7222 | 92.03 | | 35 | 3 | 096 | |
| Berry, Donald R. Jr. | 7222 | 91.93 | | 32 | 1 | 097 | |
| Mobley, Richard R. | 7222 | 91.86 | | 33 | 1 | 098 | |
| Snell, Ralph L. | 7222 | 91.83 | | 46 | 1 | 099 | |
| Calvin, Roy E. | 7222 | 91.78 | | 34 | 3 | 100 | |
| Mothershed, Willie E. | 7222 | 91.63 | | 37 | 1 | 101 | |
| Lee, Fred A. Jr. | 7222 | 91.66 | | 38 | 1 | 102 | |
| Fant, James S. | 7222 | 91.63 | | 32 | 1 | 103 | |
| Butts, Timothy P. | 7222 | 91.60 | | 30 | 1 | 104 | |
| Linder, Joseph L. | 7222 | 91.59 | | 39 | 1 | 105 | |
| Mize, Noel J. | 7222 | 91.59 | | 50 | 1 | 105 | |
| Colbert, Walter L. | 7222 | 91.57 | | 46 | 1 | 107 | |
| Richardson, Bernard | 7222 | 91.48 | | ?? | 1 | 108 | |
| Yeager, Edward C. | 7222 | 91.44 | | 45 | 1 | 109 | |
| Wise, Benny L. | 7222 | 91.36 | | 34 | 1 | 110 | |

| Name | Class Code | Grade | V.P. | Age | Sex & Color | Rank | Option |
|---|---|---|---|---|---|---|---|
| Blakely, Michael A. | 7222 | 91.31 | | 30 | 1 | 111 | |
| Hattaway, Howard D. | 7222 | 91.30 | | 43 | 1 | 112 | |
| Mays, Kenneth N. | 7222 | 91.29 | | 30 | 1 | 113 | |
| Christenberry, John J. | 7222 | 91.21 | | 37 | 1 | 114 | |
| Stubes, Waymon E. | 7222 | 91.21 | | 44 | 1 | 114 | |
| Davidson, Jeffrey N. | 7222 | 91.20 | | 33 | 1 | 116 | |
| Reeves, Freddie R. | 7222 | 91.17 | | 34 | 1 | 117 | |
| Green, William F. | 7222 | 91.10 | | 34 | 1 | 118 | |
| Holmes, Marvette | 7222 | 90.95 | | 44 | 1 | 119 | |
| Holt, Roger W. | 7222 | 90.92 | | 30 | 1 | 120 | |
| Kyser, David C. | 7222 | 90.91 | | 32 | 3 | 121 | |
| Walden, Joseph E. | 7222 | 90.89 | | 35 | 1 | 122 | |
| Harris, Ronald E. | 7222 | 90.86 | | 33 | 1 | 123 | |
| Waller, Jack A. | 7222 | 90.83 | | 32 | 1 | 124 | |
| Mayfield, Charlie C. | 7222 | 90.82 | | 35 | 1 | 125 | |
| Walden, Carter D. | 7222 | 90.80 | | 38 | 1 | 126 | |
| Cook, David W. | 7222 | 90.75 | | 32 | 1 | 127 | |
| Clements, Paul J. | 7222 | 90.71 | | 46 | 1 | 128 | |
| Golden, John M. | 7222 | 90.71 | | 30 | 1 | 128 | |

| Name | Class Code | Grade | V.P. | Age | Sex & Color | Rank | Option |
|---|---|---|---|---|---|---|---|
| Smith, Raymon D. | 7222 | 90.70 | | 28 | 3 | 130 | |
| Flanagan, Elam E. | 7222 | 90.65 | | 51 | 1 | 131 | |
| Jenkins, Lenon E. | 7222 | 90.61 | | 32 | 1 | 132 | |
| Isaac, Johnny L. | 7222 | 90.61 | | 31 | 3 | 132A | |
| Mahaney, Patrick D. | 7222 | 90.57 | | 30 | 1 | 133 | |
| Lusk, Bobby B. | 7222 | 90.55 | | 40 | 1 | 134 | |
| West, Charles G. | 7222 | 90.55 | | 34 | 1 | 134 | |
| Garner, Karen D. | 7222 | 90.51 | | 32 | 1 | 136 | |
| Leak, George W. | 7222 | 90.41 | | 34 | 1 | 137 | |
| Means, Arthur Jr. | 7222 | 90.41 | | 38 | 3 | 137 | |
| Duke, David L. | 7222 | 90.32 | | 27 | 1 | 139 | |
| Hartzog, Henry B. | 7222 | 90.31 | | 35 | 1 | 140 | |
| Burnette, James L. | 7222 | 90.25 | | 34 | 1 | 141 | |
| Thomas, Roy J. | 7222 | 90.25 | | 38 | 1 | 141 | |
| Hood, James A. | 7222 | 90.23 | | 27 | 1 | 143 | |
| Dawson, Elbert Jr. | 7222 | 90.14 | | 34 | 3 | 144 | |
| Adams, Dale W. | 7222 | 90.12 | | 32 | 1 | 145 | |
| Beasley, Perry A. | 7222 | 90.10 | | 30 | 1 | 146 | |
| Burgess, Buford R. | 7222 | 90.02 | | 47 | 1 | 147 | |

| Name | Class Code | Grade | V.P. | Age | Sex & Color | Rank | Option |
|---|---|---|---|---|---|---|---|
| Turner, Jackie P. | 7222 | 90.02 | | 38 | 1 | 147 | |
| Bowen, Tommy J. | 7222 | 90.00 | | 37 | 1 | 150 | |
| Olive, William R. | 7222 | 89.96 | | 40 | 1 | 151 | |
| Brown, Bobby W. | 7222 | 89.90 | | 37 | 1 | 152 | |
| Blackwood, James W. | 7222 | 89.87 | | 39 | 1 | 153 | |
| Worthey, Paul E. | 7222 | 89.83 | | 29 | 3 | 154 | |
| Lawler, Roane T. | 7222 | 89.77 | | 35 | 1 | 155 | |
| Shannon, Eldon E. | 7222 | 89.75 | | 30 | 1 | 156 | |
| Stewart, Harold | 7222 | 89.72 | | 30 | 3 | 157 | |
| Howell, Claudus R. | 7222 | 89.71 | | 29 | 1 | 158 | |
| Wooten, Billy R. | 7222 | 89.66 | | 44 | 1 | 159 | |
| Blue Clarence M. III | 7222 | 89.62 | | 32 | 1 | 160 | |
| Anderson, Tyrone | 7222 | 89.57 | | 34 | 3 | 161 | |
| McCarty, William R. | 7222 | 89.52 | | ?? | 1 | 162 | |
| Hood, Harvey J. | 7222 | 89.47 | | 30 | 3 | 163 | |
| Raburn, Willie D. | 7222 | 89.47 | | 45 | 1 | 163 | |
| Watkins, Cleveland R. | 7222 | 89.45 | | 36 | 3 | 165 | |
| Dit, Catherine M. | 7222 | 89.44 | | 25 | 2 | 166 | |
| Bush, Paul W. | 7222 | 87.38 | | 40 | 1 | 167 | |

| Name | Class Code | Grade | V.P. | Age | Sex & Color | Rank | Option |
|---|---|---|---|---|---|---|---|
| Grimmett, Elwin D. | 7222 | 89.35 | | 39 | 1 | 168 | |
| Thomas, Charles E. | 7222 | 89.34 | | 32 | 3 | 169 | |
| Kirk, Michael E. | 7222 | 89.32 | | 34 | 1 | 170 | |
| Helms, Robert W. | 7222 | 89.21 | | 36 | 1 | 171 | |
| Batson, William F. | 7222 | 89.18 | | 38 | 1 | 172 | |
| Noles, Thurman C. Jr. | 7222 | 89.12 | | 38 | 1 | 173 | |
| Mason, B bby G. | 7222 | 89.10 | | 41 | 1 | 174 | |
| Canterbury, Charles E. | 7222 | 89.04 | | 35 | 1 | 175 | |
| Griffin, Johnny E. | 7222 | 89.02 | | 34 | 1 | 176 | |
| Patrick, Lonnie D. | 7222 | 88.98 | | 34 | 1 | 177 | |
| Bryant, Michael R. | 7222 | 88.97 | | 32 | 1 | 178 | |
| Lindsey, Norman R. | 7222 | 88.94 | | 41 | 1 | 179 | |
| Coffey, Lavdid R. | 7222 | 88.87 | | 41 | 1 | 180 | |
| Harris, James B. | 7222 | 88.86 | | 35 | 1 | 181 | |
| Paustian, William H. | 7222 | 88.80 | | 37 | 1 | 182 | |
| Head, Bobby J. | 7222 | 88.77 | | 29 | 3 | 183 | |
| Passmore, Joseph C. | 7222 | 88.71 | | 41 | 1 | 184 | |
| Kelley, Roy W. | 7222 | 88.68 | | 38 | 1 | 185 | |
| Parker, Robert L. | 7222 | 88.60 | | 44 | 1 | 186 | |

| Name | Class Code | Grade | V.P. | Age | Sex & Color | Rank | Option |
|---|---|---|---|---|---|---|---|
| Nuonan, Patrick J. | 7222 | 89.57 | | 46 | 1 | 187 | |
| Cline, John M. Jr. | 7222 | 89.43 | | 47 | 1 | 188 | |
| Melton, Eugene A. | 7222 | 88.42 | | ?? | 1 | 189 | |
| Robertson, Joe B. | 7222 | 88.42 | | 41 | 1 | 189 | |
| Spencer, Clemmie | 7222 | 88.37 | | 34 | 3 | 191 | |
| Wood, Jimmy M. | 7222 | 88.28 | | 40 | 1 | 192 | |
| Rutledge, Osburn Jr. | 7222 | 88.26 | | 34 | 3 | 193 | |
| Bush, Richard H. Jr. | 7222 | 88.17 | | 38 | 3 | 194 | |
| Burton, Anthony J. | 7222 | 88.15 | | 29 | 3 | 195 | |
| Posey, Harold R. | 7222 | 88.11 | | 40 | 1 | 196 | |
| Powell, Charles E. | 7222 | 88.08 | | 28 | 3 | 197 | |
| Wright, Lynnwood A. | 7222 | 87.99 | | 37 | 1 | 198 | |
| Sansom, Dan J. | 7222 | 87.79 | | 33 | 1 | 199 | |
| Holley, James C. | 7222 | 87.69 | | 40 | 1 | 200 | |
| Whitworth, Ronald W. | 7222 | 87.67 | | 34 | 1 | 201 | |
| Smith, Larkus M. | 7222 | 87.65 | | 35 | 1 | 202 | |
| Greene, Everett B. | 7222 | 87.56 | | 39 | 1 | 203 | |
| Ross, Willie L. | 7222 | 87.40 | | 32 | 3 | 204 | |
| Hill, James B. | 7222 | 87.32 | | 26 | 3 | 205 | |

| Name | Class Code | Grade | V.P. | Age | Sex & Color | Rank | Option |
|---|---|---|---|---|---|---|---|
| Herring, Gerard W. | 7222 | 87.05 | | 29 | 3 | 206 | |
| Jones, Robert W. | 7222 | 87.02 | | 31 | 1 | 207 | |
| Tapley, John R. | 7222 | 86.97 | | 34 | 1 | 208 | |
| Price, Lindsey E. | 7222 | 86.92 | | 46 | 1 | 209 | |
| Taylor, William H. | 7222 | 86.90 | | 33 | 3 | 210 | |
| Flowers, Archie Jr. | 7222 | 86.79 | | 30 | 3 | 211 | |
| Palmore, Herbert N. | 7222 | 86.77 | | 34 | 3 | 212 | |
| Cunningham, Maurice L. | 7222 | 86.72 | | 32 | 3 | 213 | |
| Rines, David A. | 7222 | 86.66 | | 35 | 1 | 214 | |
| Pritchett, Luther J. | 7222 | 86.59 | | 48 | 1 | 215 | |
| Green, Howard A. | 7222 | 86.52 | | ?? | 1 | 216 | |
| Dean, James E. | 7222 | 86.50 | | 35 | 1 | 217 | |
| Johnson, Rector Jr. | 7222 | 86.38 | | 26 | 3 | 218 | |
| Cobb, Larry B. | 7222 | 86.18 | | 48 | 1 | 219 | |
| White, Willie L. | 7222 | 86.15 | | 27 | 3 | 220 | |
| Darden, Daniel M. IV | 7222 | 86.06 | | 37 | 3 | 221 | |
| Smith, Billy E. | 7222 | 86.06 | | 30 | 3 | 221 | |
| Reid, Andre L. | 7222 | 85.89 | | 30 | 3 | 223 | |
| White, Willie J. | 7222 | 85.52 | | 32 | 3 | 224 | |

| Name | Class Code | Grade | V.P. | Age | Sex & Color | Rank | Option |
|---|---|---|---|---|---|---|---|
| Lambert, Randolph | 7222 | 85.42 | | 39 | 1 | 225 | |
| Abrams, Gregory | 7222 | 85.29 | | 27 | 3 | 226 | |
| Pall, Michel A. | 7222 | 85.21 | | 26 | 1 | 227 | |
| Taylor, William H. Jr. | 7222 | 85.17 | | 26 | 3 | 228 | |
| Allen, Zack W. Jr. | 7222 | 84.95 | | 28 | 3 | 229 | |
| Bonner, Lester, Jr. | 7222 | 84.92 | | 28 | 3 | 230 | |
| Hughes, John M. | 7222 | 84.67 | | 33 | 3 | 231 | |
| Berry, Arthur S. | 7222 | 84.54 | | 33 | 3 | 232 | |
| Maynor, Benny L. | 7222 | 84.45 | | 37 | 1 | 233 | |
| Stanford, Lannie | 7222 | 84.41 | | 30 | 3 | 234 | |
| McLeod, Jesse M. III | 7222 | 84.13 | | 42 | 1 | 235 | |
| Johnson, Peter | 7222 | 84.04 | | 34 | 3 | 236 | |
| Pynes, Ronald D. | 7222 | 84.03 | | 32 | 1 | 237 | |
| Wright, Nathaniel | 7222 | 83.98 | | 31 | 3 | 238 | |
| Higgins, Robert L. | 7222 | 83.95 | | 50 | 1 | 239 | |
| Vardaman, James C. | 7222 | 83.93 | | 46 | 1 | 240 | |
| Knox, Jim H. | 7222 | 83.34 | | 28 | 3 | 241 | |
| Day, Robert S. Jr. | 7222 | 83.26 | | 31 | 1 | 242 | |
| Malls, Clifford W. | 7222 | 83.19 | | ?? | 3 | 243 | |

| Name | Class Code | Grade | V.P. | Age | Sex & Color | Rank | Option |
|---|---|---|---|---|---|---|---|
| Barren, Charles | 7222 | 83.09 | | 36 | 3 | 244 | |
| Stanton, Nathan L. | 7222 | 82.82 | | 33 | 1 | 245 | |
| Steele, Gerald | 7222 | 82.77 | | 32 | 3 | 246 | |
| White, Billy M. | 7222 | 82.57 | | 37 | 1 | 247 | |
| Crittenden, Bobby L. | 7222 | 82.54 | | 36 | 1 | 248 | |
| Vaughner, Willie | 7222 | 82.41 | | 32 | 3 | 249 | |
| Finch, Hubert Jr. | 7222 | 82.34 | | 29 | 3 | 250 | |
| Marbury, Curtis L. | 7222 | 81.92 | | 41 | 3 | 251 | |
| Bagby, James A. | 7222 | 81.78 | | 33 | 3 | 252 | |
| Stallworth, Warren A. | 7222 | 81.48 | | 28 | 3 | 253 | |
| Ligon, Robert L. | 7222 | 81.40 | | 36 | 3 | 254 | |
| Jackson, Ira Jr. | 7222 | 80.86 | | 31 | 3 | 255 | |
| Sewell, Joseph M. | 7222 | 80.74 | | 25 | 3 | 256 | |
| Tyson, Ernest E. | 7222 | 80.46 | | 34 | 3 | 257 | |
| Mahomes, Nathan | 7222 | 79.73 | | 27 | 3 | 258 | |
| Hawkins, William G. | 7222 | 78.73 | | 44 | 3 | 259 | |
| Montgomery, Isaac L. | 7222 | 77.47 | | 38 | 3 | 260 | |
| Knox, Richard R. | 7222 | 76.03 | | 26 | 3 | 261 | |
| Morse, Glenn D. | 7222 | 73.70 | | 29 | 3 | 262 | |

IN THE UNITED STATES DISTRICT COURT FOR
THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

---

CIVIL ACTION NO. 3561-N

PHILLIP PARADISE, JR., INDIVIDUALLY AND ON BEHALF OF THE CLASS SIMILARLY SITUATED, PLAINTIFFS,

UNITED STATES OF AMERICA, PLAINTIFF AND AMICUS CURIAE,

*v.*

JERRY SHOEMAKER, AS DIRECTOR OF THE ALABAMA DEPARTMENT OF PUBLIC SAFETY, ETC., ET AL., DEFENDANTS.

V. E. MCCLELLAN, WILLIAM M. BAILEY, D. B. MANSELL AND DAN DAVENPORT, ON BEHALF OF THEMSELVES AND ALL OTHERS SIMILARLY SITUATED, APPLICANTS FOR INTERVENTION

---

**MOTION TO INTERVENE**

Come now V. E. McClellan, William M. Bailey, D. B. Mansell and Dan Davenport, on behalf of themselves and all others similarly situated, by and through their attorney of record, and move this Court for leave to intervene as a matter of right in this cause pursuant to Rule 24(a) of the Federal Rules of Civil Procedure or permissibly pursuant to Rule 24(b) of the Federal Rules of Civil Procedure so as to assert the claims set forth in their complaint, a copy of which is attached hereto, and as grounds therefor set down and assign the following, separately and severally:

1. V. E. McClellan, William M. Bailey, D. B. Mansell and Dan Davenport are citizens of the State of Alabama and are regular employees holding positions in the classi-

fied service of the State of Alabama as defined in Code of Alabama 1975, § 36-26-1, *et seq.* and who are currently merit system employees of the Alabama Department of Public Safety in positions or ranks below that of Corporal. They seek to intervene and file a complaint on behalf of themselves and the following similarly situated individuals: all those persons who are citizens of the State of Alabama and who are regular employees holding positions in the classified service of the State of Alabama as defined in Code of Alabama 1975, § 36-26-1, *et seq.* and who are currently merit system employees of the Alabama Department of Public Safety in positions or ranks below that of Corporal who have taken the Corporal's Promotional Examination pursuant to the Consent Decree entered in this cause on August 18, 1981, and who after taking the same were placed or ranked in terms of eligibility for promotion from one (1) through seventy-nine (79) on the Corporal Promotional Register which was compiled thereafter. (Hereinafter referred to as "the class"). McClellan, Bailey, Mansell and Davenport and the class described above are all white and took the Corporal's Promotional Examination described above as did all eligible applicants for the same, whether said applicants were white or black.

2. McClellan, Bailey, Mansell and Davenport and the class they represent, although not parties thereto and although their interests were not adequately considered or protected thereby, are substantially effected and are in fact governed in any attempt to be promoted from their current rank or position to Corporal, including their eligibility therefor, by the terms and provisions of a partial consent decree entered in this cause on February 16, 1979, and a subsequent consent decree entered in this cause on August 18, 1981, as well as, if granted, either in whole or in part, the Plaintiffs' Motion To Enforce The Terms Of The February 16, 1979, Partial Consent Decree And The

August 18, 1981, Consent Decree filed on April 7, 1983, a copy of which is attached hereto and made a part hereof as set out in full as exhibit "A".

3. McClellan, Bailey, Mansell and Davenport and the class they represent are currently eligible for promotion from their current or present rank or position to that of Corporal as the need and number for the same are required by their employer and have successfully passed and accomplished the requirements of and the Corporal's Promotional Examination described above, as is further evidenced by the Promotion Register attached as exhibit one to the April 7, 1983, motion of the Plaintiffs referred to above.

4. As a result, McClellan, Bailey, Mansell and Davenport and the class they represent have an interest in the subject matter of this action and they are so situated that the disposition of this matter may, as a practical matter, impair or impede their ability to protect their interests and therefore they should be permitted to intervene in this action on the following grounds:

A. That the terms and provisions of the February 16, 1979, partial consent decree and the August 18, 1981, consent decree as they relate to Corporal promotion, as well as the relief sought by the Plaintiffs in their April 7, 1983, motion attached hereto as exhibit "A," impede, impair, contradict, conflict with, limit, abbrogate or otherwise interfere with the provisions of Code of Alabama 1975, § 36-26-1, *et seq.*, also known as the Merit System Act, and any rules or regulations promulgated thereunder, relating to or concerning promotions.

B. That the terms and provisions of the February 16, 1979, partial consent decree and the August 18, 1981, consent decree as they relate to Corporal promotion, as well as the relief sought by the Plaintiffs in their April 7, 1983, motion attached hereto as exhibit "A", are unreasonable, illegal, unconstitutional or against public policy.

C. That the terms and provisions of the February 16, 1979, partial consent decree and the August 18, 1981, consent decree as they relate to Corporal promotion, as well as the relief sought by the Plaintifffs in their April 7, 1983, motion attached hereto as exhibit "A", unnecessarily trammel the interests of McClellan, Bailey, Mansell, Davenport and the class they represent.

D. That the terms and provisions of the February 16, 1979, partial consent decree and the August 18, 1981, consent decree as they relate to Corporal promotion, as well as the relief sought by the Plaintiffs in their April 7, 1983, motion attached hereto as exhibit "A", amount to unlawful reverse racial discrimination in violation of the Fourteenth Amendment to the Constitution of the United States and the violation of rights guaranteed to McClellan, Bailey, Mansell, Davenport and the class they represent by 42 USCA § 1983.

E. That the terms and provisions of the February 16, 1979, partial consent decree and the August 18, 1981, consent decree as they relate to Corporal promotion, as well as the relief sought by the Plaintiffs in their April 7, 1983, motion attached hereto as exhibit "A", violate the rights guaranteed to McClellan, Bailey, Mansell, Davenport and the class they represent by 42 USCA § 1981.

F. That the terms and provisions of the February 16, 1979, partial consent decree and the August 18, 1981, consent decree as they relate to Corporal promotion, as well as the relief sought by the Plaintiffs in their April 7, 1983, motion attached hereto as exhibit "A", are unreasonable, unconstitutional, illegal or against public policy in that there is not sufficient or adequate statistical evidentiary support concerning the number of black troopers eligible for promotion to Corporal, in that the various orders and consent decrees entered in this cause contain detailed provisions which reach the objectives of the Plaintiffs' claims for relief and in that the provisions and terms of the

February 16, 1979, partial consent decree, the August 18, 1981, consent decree and the Plaintiffs' motion of April 7, 1983, have a harsh impact on innocent third parties who, despite merit, suffer from the blemish of race, to-wit: McClellan, Bailey, Mansell, Davenport and the class they represent.

G. That the terms and provisions of the February 16, 1979, partial consent decree and the August 18, 1981, consent decree as they relate to Corporal promotion, as well as the relief sought by the Plaintiffs in their April 7, 1983, motion attached hereto as exhibit "A", are unreasonable, illegal, unconstitutional or against public policy in that they substantially interfere and effect a protectable interest of McClellan, Bailey, Mansell, Davenport and the class they represent, to-wit: the right to compete for the benefits of public employment on the basis of individual worth and accomplishment, fairly ascertained, without the influence of irrelevant factors such as race.

H. That the terms and provisions of the February 16, 1979, partial consent decree and the August 18, 1981, consent decree as they relate to Corporal promotion, as well as the relief sought by the Plaintiffs in their April 7, 1983, motion attached hereto as exhibit "A," are unreasonable, illegal, unconstitutional or against public policy in that they severely impair the career aspirations and promotional expectations of McClellan, Bailey, Mansell, Davenport and the class they represent.

I. That the terms and provisions of the February 16, 1979, partial consent decree and the August 18, 1981, consent decree as they relate to Corporal promotion, as well as the relief sought by the Plaintiffs in their April 7, 1983, motion attached hereto as exhibit "A", bind or may bind McClellan, Bailey, Mansell, Davenport and the class they represent without affording them an opportunity to be heard and present evidence concerning the claims outlined above.

5. The interests of McClellan, Bailey, Mansell, Davenport and the class they represent are not adequately represented by the existing parties.

6. The claims of McClellan, Bailey, Mansell, Davenport and the class they represent and the main action have questions of law or fact in common and intervention will not unduly delay or prejudice the adjudication of the rights of the original parties.

Alternatively, because they are subject to service of process and because their joinder will not deprive the Court of jurisdiction over the subject matter of this action, McClellan, Bailey, Mansell, Davenport and the class they represent move this Court to enter an Order pursuant to Rule 19 of the Federal Rules of Civil Procedure joining them as indispensible parties in that in their absence complete relief cannot be accorded among those already parties or that they claim an interest relating to the subject of the action and are so situated that the disposition of the action in their absence may as a practicable matter impair or impede their ability to protect that interest or leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of their claimed interest. In support of this motion, McClellan, Bailey, Mansell, Davenport and the class they represent adopt and incorporate herein by reference all the grounds, separately and severally, alleged in support of their motion to intervene.

WHEREFORE, PREMISES CONSIDERED, McClellan, Bailey, Mansell, Davenport and the class they represent respectfully pray that they be allowed to intervene in this proceeding pursuant to either Rule 24(a) or 24(b) of the Federal Rules of Civil Procedure for the reasons so stated and that the Court permit them to file their proposed Complaint in Intervention or in the alter-

native enter an Order joining them as indispensible parties pursuant to Rule 19 of the Federal Rules of Civil Procedure.

Respectfully submitted

Stuart & Ward

/s/ JAMES S. WARD

James S. Ward
*Attorney for Applicants for Intervention*

OF COUNSEL
Stuart & Wood
1933 Montgomery Highway Suite 200
Birmingham, Alabama 35209
939-0276

**CERTIFICATE OF SERVICE**

I certify that I have served a copy of the above and foregoing pleading on the Honorable Dennis N. Balske, P.O. Box 2087, Montgomery, Alabama 36103-2087, the Honorable Edward L. Hardin, Jr., P.O. Box 1214, Birmingham, Alabama 35201 and the Ms. Cynthia Drabek, Federal Enforcement Section, United States Department of Justice, Washington, D.C. 20530 by placing a copy of same in the United States mail, postage prepaid and properly addressed on this the 13th day of April, 1983.

/s/ JAMES S. WARD

Of Counsel

IN THE UNITED STATES DISTRICT COURT FOR
THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

---

CIVIL ACTION NO. 3561-N

PHILLIP PARADISE, JR., INDIVIDUALLY AND ON BEHALF OF THE CLASS SIMILARLY SITUATED, PLAINTIFFS,

UNITED STATES OF AMERICA, PLAINTIFF AND AMICUS CURIAE,

*v.*

JERRY SHOEMAKER, AS DIRECTOR OF THE ALABAMA DEPARTMENT OF PUBLIC SAFETY, ETC., ET AL., DEFENDANTS.

---

**PLAINTIFFS' MOTION TO ENFORCE THE TERMS OF THE FEBRUARY 16, 1979 PARTIAL CONSENT DECREE AND THE AUGUST 18, 1981 CONSENT DECREE**

---

Plaintiffs, by the undersigned counsel, respectfully move the Court for an order enforcing the terms of the February 16, 1979 Partial Consent ~~D~~decree and the August 18, 1981 Consent Decree. Specifically, plaintiffs seek an order requiring defendant:

(1) to implement "a promotion procedure which is fair to all applicants and which promotion procedure when used either for screening or ranking will have little or no adverse impact upon blacks seeking promotion to corporal." See Partial Consent Decree of February 16, 1979, p.4 § IV(A).

(2) to develop and implement a new procedure for promotion to the positions of sergeant, lieutenant, captain and major, which will have little or no adverse impact upon blacks seeking promotion to these positions. See *id.* at § B.

(3) to promote qualified blacks to the corporal position at a rate that does not result in adverse impact and which is within the spirit of this Court's previous orders and the parties' consent decrees. See Consent Decree of August 18, 1981, p.4 ¶6.

(4) to pay reasonable attorneys' fees to plaintiffs' counsel in this matter. The following paragraphs disclose the reasons why this Court should grant plaintiffs' request.

### A. History of this Litigation

On February 10, 1972, the Court found that the Alabama Department of Public Safety had "engaged in a blatant and continuous pattern and practice of discrimination in hiring. . . ." *NAACP v. Allen*, 340 F.Supp. 703, 705 (M.D.Ala. 1972). The Court ordered defendants to hire one black trooper for each white trooper hired "until approximately twenty-five (25) percent of the Alabama state trooper force is comprised of Negroes." *Id.* at 706. This order was affirmed on appeal and, in 1975, restated emphatically in granting plaintiffs' motion for supplemental relief.

On February 16, 1979, a partial consent decree was approved by the Court, following the second reopening of the case by plaintiffs. This decree required, *inter alia*, that defendants institute "a promotion procedure which is in conformity with the 1978 *Uniform Guidelines of Selection Procedure*, 43 Fed. Reg. 38290, and which, in addition, when used either for screening or ranking will have little or no adverse impact on blacks seeking promotion to corporal." See Decree at p.4, § IV(A). It gave defendants one year to accomplish this objective, after which defendants were "to begin validation of a promotional procedure for the position of sergeant and, in turn, for the positions of lieutenant, captain and major." *Id.* § IV(B).

On April 9, 1981, the defendants moved the Court to approve its newly developed "Corporal's Promotional Examination." Plaintiffs objected to it on the ground that it did not conform to the requirements of the *Uniform Guidelines*, but in view of the defendants' expression of an urgent need for more corporals, eventually entered into the August 18, 1981 Consent Decree. This Decree permitted defendants to utilize the protested promotional procedure, but required that the results be reviewed to determine whether they adversely impacted black applicants prior to the making of any promotions. The Decree further provided that if the new procedure adversely impacted black candidates: (1) "promotions shall be made in a manner that does not result in adverse impact," (2) "[d]efendants shall submit to plaintiffs their proposal for making promotions in conformity with the Partial Consent Decree and with this Decree; and (3) "[i]f the parties do not agree on the method for making promotions, the matter shall be submitted to the Court for resolution." See Consent Decree of August 18, 1981, p. 4, ¶6.

Finally, in the event of adverse impact, the Decree requires defendants to "examine the results of each component of the selection procedure to identify the source(s) of the adverse impact and . . . revise the procedure so as to avoid adverse impact in the future." According to the Decree, defendants must provide this data to plaintiffs, whereafter the parties shall attempt to agree upon modifications. In the event of disagreement, "the matter shall be submitted to the Court for resolution." *Id.* p.5, ¶7.

### B. Factual Developments

The new selection procedure unquestionably adversely impacted black applicants. Two hundred sixty-two troopers applied for promotion to the rank of corporal. Black applicants were ranked as follows: 96, 100, 121,

130, 132A, 137, 144, 154, 157, 161, 163, 165, 169, 183, 191, 193, 194, 195, 197, 204, 205, 206, 210, 211, 212, 213, 218, 220, 221, 223, 224, 226, 228, 229, 230, 231, 232, 234, 236, 238, 241, 243, 244, 246, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262. See Promotion Register, attached hereto as Exhibit 1. Whites held the top 95 positions, whereas blacks held the bottom 14 positions. Of the 59 blacks who applied, only 4 were ranked in the top half, and they were at the bottom of the top half (#'s 96, 100, 121 and 130).

In apparent recognition of the adverse impact of this register, defendants have recently offered to promote black applicants at a rate of 20% (1 of every 5 promotions will be black).[1] Plaintiffs have rejected this offer. Defendants have not "revise[d] the procedure so as to avoid adverse impact in the future" and have not "provide[d] plaintiffs with data showing the impact of each component of the selection procedure and an item-by-item analysis of the impact of the written test." See August 18, 1981 Decree at p.5, ¶7.

Thus, no blacks (or whites) have been promoted to corporal in the last four years. There is no valid promotion procedure in place for promotions to corporal, sergeant, lieutenant, captain or major. Under the terms of the 1979 Partial Consent Decree and the 1981 Consent Decree, this Court must now decide: (1) what percentage of the forthcoming 18-20 promotions to corporal should be black; (2) when to require defendants to implement a valid procedure for promotions to corporal; and (3) when to require defendants to implement valid procedures for promotions to sergeant, lieutenant, captain and major.

---

[1] Defendants stated that they need to promote approximately 18 to 20 troopers to the rank of corporal.

### C. Plaintiffs' Position

Plaintiffs submit that blacks should be promoted to corporal at the same rate at which they have been hired, 1 for 1, until such time as the defendants implement a valid promotional procedure. Such an order will serve two purposes: (1) it will encourage defendants to develop a valid promotional procedure as soon as possible; and (2) it will help to alleviate the gross underrepresentation of blacks in the supervisory ranks of the Department.

At the present time there are four black corporals. All four were promoted in 1979 under the terms of the Partial Consent Decree. There are 67 corporals. Thus, blacks comprise 6% of the corporals at this time. Assuming the Department promotes 20 troopers to the rank of corporal, blacks will comprise 16% of the corporals if plaintiffs' 1 for 1 suggestion is implemented, whereas they will only comprise 9.2% if defendant's 1 for 5 plan is followed.[2]

Plaintiffs' request is much more in line with the Court's previous orders than is defendants' plan. The ultimate goal of the Court's orders is a force that is 25% black. At the present time, according to defendants, the force is approximately 22-23% black. However, due to defendants' reluctance to promote its black troopers, all but four of these troopers hold the lowest trooper rank. If the Department is ever to be truly integrated, approximately 25% of its force at every rank should be black. A requirement that defendants promote 10 black of the next 20 corporals, thereby raising black representation in the corporal rank from 6% to 16% is both a reasonable and necessary[3] step to the attainment of this Court's stated goal.

---

[2] After 20 promotions there will be a total of 87 corporals. Under plaintiffs' plan, there would be 14 black corporals, whereas under defendants' plan, only 8 corporals would be black.

[3] It would perhaps not be necessary if the defendants had developed their own valid promotion procedure as required by the 1979 Decree. It is defendants' perennial non-compliance that necessitates this action.

If the Court has any hesitation to order this relief, it need look no further than Judge Johnson's Order and Memorandum of April 13, 1979. There, the Court rejected the defendants' request for an amendment to the original order changing the requirement for black employment from 25% of the trooper force to 25% of entry-level troopers. Judge Johnson's reasoning fits the instant situation. It is reproduced here with the hope that the Court will restate it in an order granting plaintiffs' present request:

> In 1972, defendants were not just found guilty of discriminating against blacks in hiring to entry-level positions. The Court found that in thirty-seven years there had never been a black trooper at any rank. One continuing effect of that discrimination is that, as of November 1, 1978, out of 232 state troopers at the rank of corporal or above, *there is still not one black*. The quota fashioned by the Court provides an impetus to promote blacks into those positions. To focus only on the entry-level positions would be to ignore that past discrimination by the Department was pervasive, that its effects persist, and that they are manifest. As the Fifth Circuit has recognized, the order in this case does not seek to grant proportional representation in public employment to the black citizens of Alabama. *NAACP* v. *Allen*, 493 F.2d at 621. The order in this case is but the necessary remedy for an intolerable wrong.

It has been four years since Judge Johnson wrote these words. Yet the only change in the makeup of the Department was the promotion of four blacks to Corporal as mandated by the 1979 Partial Consent Decree. Not only has the Department failed to promote any of its black troopers, but it had done nothing to insure that its black troopers will ever play a truly representative role in the operation of the Department. No valid promotion

mechanism has yet been developed by which they can begin moving from the lowest rank, trooper, toward the highest rank, major, even though blacks have been employed in the Department for eleven years.

In order to insure that blacks finally gain the opportunity to move toward positions of responsibility within the Department, the Court should order defendants: (1) to immediately promote 18 to 20 employees to the corporal position, depending on need, on a 1 for 1 basis; (2) to develop and implement a valid promotional procedure for the corporal's position within one year;[4] to develop and implement valid promotional procedures for sergeant, lieutenant, captain and major within two years;[5] and to pay plaintiffs' counsel reasonable attorneys fees for the prosecution of this action.[6]

Respectfully submitted,

/s/ DENNIS N. BALSKE

Dennis N. Balske
John L. Carroll
*1001 S. Hull Street*
*P.O. Box 2087*
*Montgomery, AL 36103-2087*
*Attorneys for Plaintiffs*

---

[4] In order to insure compliance, certain procedural safeguards should be included, such as open discovery to plaintiffs' counsel, a deadline for production of the finished product to plaintiffs' counsel, etc. Moreover, the Court should order that all future necessary promotions to corporal be made on a 1 for 1 basis until the Court has approved a valid promotional procedure.

[5] The procedural safeguards discussed in n.4 should be included, and the Court should order that beginning two years from the entry of its order, all promotions to sergeant, lieutenant, captain and major be made on 1 for 1 basis if a valid procedure for promotions, approved by the Court, is not in place.

[6] Bryon Prescott was recently appointed by Governor Wallace to replace defendant Shoemaker. His name should be substituted for that of defendant Shoemaker in future pleadings and orders.

**CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing have been served upon Ed Hardin and Cynthia Drabek by U.S. first class mail, postage prepaid, this 7th day of April, 1983.

/s/ DENNIS N. BALSKE
*Attorney for Plaintiffs*

# IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF ALABAMA NORTHERN DIVISION

## CIVIL ACTION NO. 3561-N

PHILLIP PARADISE, JR., INDIVIDUALLY AND ON BEHALF OF THE CLASS SIMILARLY SITUATED, PLAINTIFFS,

UNITED STATES OF AMERICA, PLAINTIFF AND AMICUS CURIAE,

V.

JERRY SHOEMAKER, AS DIRECTOR OF THE ALABAMA DEPARTMENT OF PUBLIC SAFETY, ETC., ET AL., DEFENDANTS.

V. E. MCCLELLAN, WILLIAM M. BAILEY, D. B. MANSELL AND DAN DAVENPORT, ON BEHALF OF THEMSELVES AND ALL OTHERS SIMILARLY SITUATED, APPLICANTS FOR INTERVENTION

## AMENDMENT TO MOTION TO INTERVENE

Come now V. E. McClellan, William M. Bailey, D. B. Mansell and Dan Davenport on behalf of themselves and all others similarly situated, by and through their attorney of record, and hereby amend their motion to intervene by adding the following to the end of paragraph two of their original motion to intervene:

Specifically, V. E. McClellan, William M. Bailey, D. B. Mansell, Dan Davenport and the class they represent aver that the provisions and terms of the consent decrees aforementioned allow rank order promotion to Corporal

only if there is little or no adverse impact upon blacks and that the aforesaid decrees recite or contain no evidentiary support to justify this limitation.

Respectfully submitted

Stuart & Ward

/s/ JAMES S. WARD

James S. Ward
*Attorney for Applicants*
*for Intervention*
*1933 Montgomery Highway*
*Suite 200*
*Birmingham, Alabama 35209*
*939-0276*

**CERTIFICATE OF SERVICE**

I certify that I have served a copy of the above and foregoing Amendment to Motion to Intervene on the Honorable Dennis N. Balske, P.O. Box 2087, Montgomery, Alabama 36103-2087, the Honorable Edward L. Hardin, Jr., P.O. Box 1214, Birmingham, Alabama 35201 and Ms. Cynthia Drabek, Federal Enforcement Section, United States Department of Justice, Washington, D.C. 20530, by placing a copy of same in the United States mail, postage prepaid and properly addressed on this the 15 day of April, 1983.

/s/ JAMES WARD

Of Counsel

IN THE UNITED STATES DISTRICT COURT FOR
THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

---

CIVIL ACTION NO. 3561-N

PHILLIP PARADISE, JR., INDIVIDUALLY AND ON BEHALF OF THE CLASS SIMILARLY SITUATED, PLAINTIFFS,

UNITED STATES OF AMERICA, PLAINTIFF AND AMICUS CURIAE,

*v.*

JERRY SHOEMAKER, AS DIRECTOR OF THE ALABAMA DEPARTMENT OF PUBLIC SAFETY, ETC., ET AL., DEFENDANTS.

V. E. MCCLELLAN, WILLIAM M. BAILEY, D. B. MANSELL AND DAN DAVENPORT, ON BEHALF OF THEMSELVES AND ALL OTHERS SIMILARLY SITUATED, APPLICANTS FOR INTERVENTION

---

**COMPLAINT OF INTERVENORS**

---

**I**

**JURISDICTION**

1. This action for appropriate equitable relief and declaratory judgment arises under the Fourteenth Amendment of the United States Constitution and 42 USC §1981 and § 1983. Jurisdiction of this Court is invoked pursuant to 28 USC § 1343 and § 2201 and § 2202. In this action, Intervenors and the class they represent seek to have the provisions of the consent decrees entered in this cause on February 16, 1979, and August 18, 1981, which deal with corporal promotion, as well as the relief prayed for in the Plaintiffs' Motion To Enforce The Term Of The Febru-

ary 16, 1979, Partial Consent Decree And The August 18, 1981, Partial Consent Decree declared unreasonable, illegal, unconstitutional or against public policy, seek appropriate equitable relief enjoining the operation of these provisions and motion and seek relief which ensures that any future or further promotions to Corporal be accomplished in a constitutional and non-discriminatory manner without infringing upon the Intervenors' and the class they represent constitutional rights guaranteed by the Fourteenth Amendment of the United States Constitution and rights guaranteed to them by 42 USC § 1981 and § 1983.

**PARTIES**

2. V. E. McClellan, William M. Bailey, D. B. Mansell and Dan Davenport (hereinafter referred to as "Intervenors") are white citizens of the State of Alabama and are regular employees holding positions in the classified service of the State of Alabama as defined in Code of Alabama 1975, § 36-26-1, *et seq.* and who are currently merit system employees of the Alabama Department of Public Safety in positions or ranks below that of Corporal. Intervenors have taken the Corporal's Promotional Examination pursuant to the consent decree entered in this cause on August 18, 1981, as did all eligible applicants for the same, whether said applicants were white or black and are substantially effected and are currently governed in any attempt to be promoted from their current rank or position to Corporal, including eligibility for that position, by the terms and provisions of a partial consent decree entered in this cause on February 16, 1979, and a subsequent consent decree entered in this cause on August 18, 1981, as well as, if granted, either in whole or in part, the Plaintiffs' Motion To Enforce The Term Of The February 16, 1979, Partial Consent Decree And The August 18, 1981, Consent Decree. Intervenors are cur-

rently eligible for promotion from their current or present rank or position to that of Corporal as the need and number for the same are required by their employer and have successfully passed and accomplished the requirements of and the Corporal's Promotional Examination described above.

The remaining parties in this action have been identified in previous pleadings filed in this cause. Intervenors and the class they represent allege that the Defendants in this cause are now and at all times material hereto were acting under the color and pretense of the statutes, ordinances, regulations, customs and/or usages of the State of Alabama.

## II

## CLASS ACTION AVERMENTS

### A. INTERVENORS' CLASS

1. This action is brought by the Intervenors individually and pursuant to Rule 23 of the Federal Rules of Civil Procedure as a class action on behalf of the following described individuals:

(a) All those persons who are white citizens of the State of Alabama and who are regular employees holding positions in the classified service of the State of Alabama as defined in Code of Alabama 1975, § 36-26-1, *et seq.* and who are currently merit system employees of the Alabama Department of Public Safety in positions or ranks below that of Corporal who have taken the Corporal's Promotional Examination pursuant to the consent decree entered in this cause on August 18, 1981, along with all eligible applicants for the same, whether said applicants were white or black, and who after taking the same were placed or ranked in terms of eligibility for promotion from one (1) through seventy-nine (79) on the

Corporal Promotional Register which was compiled thereafter and who are substantially effected and who are now governed in any attempt to be promoted from their current rank or position to that of Corporal, including their eligibility for that position, by the terms and provisions of a partial consent decree entered in this cause on February 16, 1979, and a subsequent consent decree entered in this cause on August 18, 1981, as well as, if granted, either in whole or in part, the Plaintiffs' Motion To Enforce The Terms Of The February 16, 1979, Partial Consent Decree And The August 18, 1981, Consent Decree and who are currently eligible for promotion from this current or present rank or position to that of Corporal as the need and number for the same are required by their employer and who have successfully passed and accomplished the requirements of and the Corporal's Promotional Examination described above.

**B. PRE-REQUISITE TO CLASS ACTION**

2. Intervenors aver as follows:

(a) The class is so numerous that joinder of all members is impracticable.

(b) There are questions of law and fact common to the class in that it must be determined whether the terms and provisions of the February 16, 1979, partial consent decree and the August 18, 1981, consent decree as they relate to Corporal promotion, as well as the relief sought by the Plaintiffs in their April 7, 1983, Motion To Enforce The Terms Of The February 16, 1979, Partial Consent Decree And The August 18, 1981, Consent Decree (a) impede, impair, contradict, conflict with, limit, abborgate or otherwise interfere with provisions of Code of Alabama 1975, § 36-26-1,

*et seq.* also known as the Merit System Act, and any rules or regulations promulgated thereunder, relating to or concerning promotions, (b) are unreasonable, illegal, unconstitutional or against public policy, (c) are unreasonable, illegal, unconstitutional or against public policy in that they unnecessarily trammel the interests of the Intervenors and the class, (d) amount to unlawful reverse racial discrimination in violation of the Fourteenth Amendment to the Constitution of the United States and the violation of rights guaranteed to the Intervenors and the class by 42 USC § 1981 and § 1983, (e) are unreasonable, unconstitutional, illegal or against public policy in that there was not sufficient and adequate statistical evidentiary support concerning the number of black troopers eligible for promotion to Corporal recited or contained in the decrees, in that the various orders and consent decrees entered in this cause contain detailed provisions which reach the objectives of the Plaintiffs' claims for relief and in that the impact of the provisions and terms of the aforementioned consent decrees and motion have a harsh impact on innocent third parties who, despite merit, suffer from the blemish of race, (f) are unreasonable, illegal, unconstitutional or against public policy in that they substantially interfere and effect a protectable interest of the Intervenors and the class, to wit: the right to compete for the benefits of public employment on the basis of individual worth and accomplishment, fairly ascertained, without the influence of irrelevant factors such as race, (g) are unreasonable, illegal, unconstitutional or against public policy in that they severely impair the career aspirations and promotional expectations of the Intervernors and the class, (h) bind or

may bind the Intervenors and the class without affording them an opportunity to be heard and present evidence concerning the claims outlined above.

3. The claims of the Intervenors are typical of the claims of all the members of the class.

4. The Intervenors and their attorneys will fairly and adequately protect the interest of all the members of the class.

**COUNT ONE**

1. On February 10, 1972, over eleven (11) years ago, the Court entered an order in this cause finding that prior to that date, the Defendants had engaged in a blatant and continuous pattern and practice of discrimination in *hiring* in the Alabama Department of Public Safety, both as to troopers and supporting personnel. Concommitantly, the Court enjoined the Defendants from engaging in employment practices, including recruitment, examination, appointment, training, promotion, retention or any other personnel action, for the purpose or with the effect of discriminating against any employee, or actual or potential applicants for employment, on the ground of race or color. (paragraph two). Intervenors aver that this prohibition prevented the Defendants from engaging in the activities described above in a manner which discriminated against *whites* as well as blacks.

In addition, the Court ordered the Defendants to hire one black trooper for each white trooper hired until approximately twenty-five (25) percent of the Alabama State Trooper force comprised of Negros (paragraph three). Intervenors are informed and believe and on such information and belief aver that the Defendants have substantially complied with this requirement.

2. On February 16, 1979, a partial consent decree was executed by the parties and approved by the Court. In this decree, Defendants agreed to have as an objective the utilization of a promotion procedure which was fair to all ap-

plicants and which promotion procedure when used either for screening or ranking would have little or no adverse impact upon blacks seeking promotion to Corporal. In accordance with that objective, Defendants agreed to utilize a promotion procedure which is in conformity with the 1978 *Uniform Guidelines of Selection Procedures*, 43 Fed. Reg. 38290, and which, in addition, when used either for screening or ranking will have little or no adverse impact on blacks seeking promotion to Corporal (paragraph IVA). However, this decree neither recites nor contains any appropriate statistical evidentiary support for the Defendants' agreement contained therein or for their agreement to utilize a promotion procedure which will have little or no adverse impact upon blacks seeking promotion to Corporal.

Moreover, Plaintiffs aver that Defendants also agreed in this consent decree to have as an objective within the Department of Public Safety, ". . . an employment and promotion system that is racially neutral." and agreed not to engage in any act or practice which discriminates on the basis of race in hiring, promoting, upgrading, training, assignment, discharge or otherwise discriminated against any employee of, or any applicant, or potential applicant for employment with respect to compensation, terms and conditions or privileges of employment because of such individual's race. (paragraph I) Intervenors aver that these agreements prohibit discrimination against whites as well as blacks.

3. On August 18, 1981, another consent decree was entered in this cause. In that decree, the parties agreed that the proposed selection procedure for Corporal promotion shall be administered and scored as set out in the Defendant's letter to Plaintiffs and the Court dated May 21, 1981, and in the proposed selection procedure and validation report accompanying that letter, that information being attached to and made a part of this consent decree.

Intervenors allege that it is clear from a reading of paragraphs one and two of that consent decree that the provisions thereof were to apply equally to all applicants for the examination for State Trooper Corporal, regardless of the race of the applicant. Intervenors further aver that the Plaintiffs agreed to the procedure for, the make-up, including the components thereof, the administering and scoring of the written examination for State Trooper Corporal outlined in that consent decree by their approval of that consent decree.

4. The August 18, 1981, consent decree provided that the Defendants shall compile a list of candidates for promotion for State Trooper Corporal positions based upon the composite numerical scores of applicants on the selection procedure and allow Defendants, in determining eligibility, to apply the standards for length of service set out in the proposed selection procedure. (paragraph three)

5. Despite the provisions described in Paragraphs three and four above, the August 18, 1981, consent decree allowed selections or promotions to Corporal to be made in rank order from the list described in paragraph two of the decree only if the selection procedure had little or no adverse impact againt black applicants, that determination to be made based upon reference to the *Uniform Guidelines on Employee Selection Procedures*, 43 Fed. Reg. 38290, 28 C.F.R. Sec. 50.14 (1978). (paragraph five). Intervenors aver that there is absolutely no appropriate statistical evidentiary data recited or contained in the August 18, 1981, consent decree to support or justify the limitation that selections shall be made in rank order for a Corporal only if the selection procedure has little or no adverse impact against black applicants.

6. The August 18, 1981, consent decree permitted Defendants to utilize the Corporal promotional procedure outlined therein but mandated that the results be reviewed

by reference to the Uniform Guidelines cited above, to determine whether they had an adverse impact against black applicants prior to the Department being allowed to make any promotions. The decree dictated that if the new procedure had an adverse impact upon blacks then promotion shall be made in a manner that does not result in adverse impact on the initial group of promotions or cumulatively during the use of the procedure, that the Defendant shall submit to Plaintiffs a proposal for making promotions in conformity with the February 16, 1979, partial consent decree and with the August 18, 1981, decree and that if the parties do not agree on a method for making promotions, the matter shall be submitted to the Court for resolution. (paragraph six) Intervenors aver that the decree cites or refers to no appropriate statistical information or statistical evidentiary support to justify the limitation of, "little or no adverse impact upon blacks" before promotions to Corporal could be made by the Alabama Department of Public Safety. Intervenors further aver that the decree cites or refers to absolutely no appropriate statistical evidentiary support, or finding or information to justify the use of the Uniform Guidelines referred to above and the answer to question 12 of the *Questions and Answers to Clarify and Provide a Common Interpretation of the Uniform Guidelines on Employee Selection Procedures*, 44 Fed. Reg. 11996, March 2, 1979, in determining adverse impact.

7. Intervenors aver that there is no appropriate statistical evidentiary support cited or referred to in the decree which supports or justifies the provisions of paragraph seven thereof and further aver that they have an interest, for themselves and the class they represent as those eligible for promotion to Corporal pursuant to the test conducted and given as outlined in the August 18, 1981, consent decree, to conduct discovery and proffer to the Court statistical evidence concerning any modifica-

tions on the existing selection procedure, on the use of the existing selection procedure for future administrations, to aid the Court in resolving this matter, or to demonstrate that the provisions of the February 16, 1979, partial consent decree and the August 18, 1981, consent decree relating to Corporal promotion are unreasonable, unconstitutional, illegal or against public policy.

8. Intervenors aver that the Corporal Promotional Examination which was given subsequent to the consent decree entered in this cause on August 18, 1981, was conducted, administered, graded and analyzed in a racially neutral and non-discriminatory manner without any consideration or regard to race and that the said examination was given and conducted under these conditions to all those eligible applicants for the same, whether those applicants were white or black.

9. Intervenors aver that they are governed and covered by the provisions of Code of Alabama 1975, § 36-26-1, *et seq.*, also known as the Merit System Act, and any rules or regulations promulgated thereunder, which relate to or concern promotions and further aver that those statutes and rules grant upon them a vested right to be promoted to Corporal in the same manner as those previously promoted to that position and without any regard or influence based on race but rather on merit and competition. See Code of Alabama 1975, § 36-26-23.

10. Intervenors aver that they are innocent of any wrongdoing nor did they participate in any of the activities or practices which necessitated the granting of any orders or decrees in this cause and are innocent victims whose career aspirations and expectations should not be blemished or impeded because of their race.

11. Intervenors aver that there are other detailed provisions of the orders and decrees entered in this cause which reach the objectives of the Plaintiffs' claims for relief.

12. Intervenors aver that the partial consent decree of February 16, 1979, and the consent decree of August 18, 1981, as they relate to promotion generally and to Corporal promotion specifically, including but not limited to those provisions which require that any selection procedure for Corporal promotion utilized have little or no adverse impact against black applicants, this determination to be made by reference to the *Uniform Guidelines on Employee Selection Procedures*, 44 Fed. Reg. 11996 28 C.F.R Sec. 5014 and the answer to question 12 of the Questions and Answers to Clarify and Provide a Common Interpretation of the *Uniform Guidelines on Employee Selection Procedures*, 44 Fed. Reg. 11996, March 2, 1979, as well as the relief sought in Plaintiffs' Motion to Enforce The Terms Of The February 16, 1979, Partial Consent Decree And The August 18, 1981, Consent Decree, amount to hiring and promotional quotas and affirmative action plans or procedures for promotion which have the effect of reverse racial discrimination on the Intervenors and their class in violation of the Fourteenth Amendment to the Constitution of the United States, which violates their rights guaranteed by 42 USC § 1981 and § 1983 in that, *inter alia* they deprive them of the full and equal benefit of all laws free of racial discrimination or which are unreasonable, unconstitutional, illegal or against public policy.

**FIRST CAUSE OF ACTION**

13. That the terms and provisions of the February 16, 1979, partial consent decree and the August 18, 1981, consent decree as they relate generally to promotion and specifically to Corporal promotion, as well as the relief sought by the Plaintiffs in their motion of April 7, 1983, which is referred to above, impede, impair, contradict, conflict with, limit, abbrogate or otherwise interfere with the provisions of Code of Alabama 1975, § 36-26-1, *et*

*seq.*, also known as the Merit System Act, and any rules or regulations promulgated thereunder, relating to or concerning promotions and are therefore unreasonable, illegal, unconstitutional or against public policy.

**SECOND CAUSE OF ACTION**

14. That the terms and provisions of the February 16, 1979, partial consent decree and the August 18, 1981, consent decree as they relate generally to promotion and specifically to Corporal promotion, as well as the relief sought by the Plaintiffs in their motion of April 7, 1983, which is referred to above, are unreasonable, illegal, unconstitutional or against public policy.

**THIRD CAUSE OF ACTION**

15. That the terms and provisions of the February 16, 1979, partial consent decree and the August 18, 1981, consent decree as they relate generally to promotion and specifically to Corporal promotion, as well as the relief sought by the Plaintiffs in their motion of April 7, 1983, which is referred to above, unnecessarily trammel the interest of the Intervenors and the class they represent and are therefore unreasonable, illegal, unconstitutional or against public policy.

**FOURTH CAUSE OF ACTION**

16. That the terms and provisions of the February 16, 1979, partial consent decree and the August 18, 1981, consent decree as they relate generally to promotion and specifically to Corporal promotion, as well as the relief sought by the Plaintiffs in their motion of April 7, 1983, which is referred to above, amount to unlawful reverse racial discrimination in violation of the Fourteenth Amendment to the Constitution of the United States and the violation of rights guaranteed to the Intervenors and

the class they represent by 42 USC § 1983 in that the Defendants have now and at all materia! times hereto acted under the color and pretense of the statutes, ordinances, regulations, customs and usages of the State of Alabama in relation to the carrying out of the terms and provisions of the consent decrees referred to above.

**FIFTH CAUSE OF ACTION**

17. That the terms and provisions of the February 16, 1979, partial consent decree and the August 18, 1981, consent decree as they relate generally to promotion and specifically to Corporal promotion, as well as the relief sought by the Plaintiffs in their motion of April 7, 1983, which is referred to above, violate the rights guaranteed to the Intervenors and the class they represent by 42 USC § 1981 in that they have been deprived of the full and equal benefit of all laws in relation to the provisions and terms of the decrees and motions referred to above and in relation to promotion free of racial discrimination or without regard to race.

**SIXTH CAUSE OF ACTION**

18. That the terms and provisions of the February 16, 1979, partial consent decree and the August 18, 1981, consent decree as they relate generally to promotion and specifically to Corporal promotion, as well as the relief sought by the Plaintiffs in their motion of April 7, 1983, which is referred to above, are unreasonable, unconstitutional, illegal or against public policy in that the decrees neither recite not contain any appropriate statistical evidentiary support concerning the number of black troopers eligible for promotion to Corporal or concerning the requirement of little or no adverse impact against blacks before there can be promotion in rank order, in that the various orders and consent decrees entered in this

cause contain detailed provisions which reach the objectives of the Plaintiffs' claims for relief and/or in that the provisions and terms of the February 16, 1979, partial consent decree, the August 18, 1981, consent decree and the Plaintiffs' motion of April 7, 1983, have a harsh impact on innocent third parties who, despite merit, suffer from the blemish of race.

**SEVENTH CAUSE OF ACTION**

19. That the terms and provisions of the February 17, 1979, partial consent decree and the August 18, 1981, consent decree as they relate generally to promotion and specifically to Corporal promotion, as well as the relief sought by the Plaintiffs in their motion of April 7, 1983, which is referred to above, are unreasonable, illegal, unconstitutional or against public policy in that they substantially interfere and effect a protectable interest of the Intervenors and the class they represent, to-wit: the right to compete for the benefits of public employment on the basis of individual worth and accomplishment, fairly ascertained, without the influence of irrelevant factors such as race.

**EIGHTH CAUSE OF ACTION**

20. That the terms and provisions of the February 17, 1979, partial consent decree and the August 18, 1981, consent decree as they relate generally to promotion and specifically to Corporal promotion, as well as the relief sought by the Plaintiffs in their motion of April 7, 1983, which is referred to above, are unreasonable, illegal, unconstitutional or against public policy in that they severely impair the career aspiration and promotional expectations of the Intervenors and the class they represent.

21. There is between the parties an actual controversy as set forth herein. The Intervenors and the class they represent have suffered and will continue irreparable injury and damage by reason of the acts and the provisions of the consent decrees and motion complained of herein. Intervenors and the class they represent have no plain, adequate or complete remedy to address the wrongs, unlawful acts, and the terms and provisions of the consent decrees and motions complained of herein other than this action for a declaration of rights and appropriate equitable relief. Any remedy to which Intervenors and the class they represent could be remitted would be attended with such uncertainties and delays as to deny substantial relief, and would involve multiplicity of suits causing further irreparable injury, damage and inconvenience.

WHEREFORE, Intervenors, on behalf of themselves and all others similarly situated, respectfully pray that this Court will take jurisdiction of this cause and do the following:

A. Certify this action as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure.

B. Following a hearing on this complaint, issue a preliminary injunction, to be made permanent later, enjoining the Defendants or any other party from promoting any individual to the rank of Corporal pursuant to the terms and provisions of the partial consent decree of February 16, 1979, the consent decree of August 18, 1981, or pursuant to the Plaintiffs' Motion To Enforce The Terms Of The February 16, 1979, Partial Consent Decree And The August 18, 1981, Consent Decree.

C. Declare the terms and provisions of the partial consent decree of February 16, 1979, the consent decree of August 18, 1981, or pursuant to the Plaintiffs' Motion to Enforce The Terms Of The February 16, 1979, Partial Consent Decree And The August 18, 1981, Consent Decree to be unreasonable, illegal, unconstitutional or against public policy.

D. Enter an order which ensures that any future or further promotion of any individual employed by the Alabama Department of Public Safety to the rank of Corporal be accomplished without infringing upon the Intervenors' or the class they represent constitutional rights, including but not limited to, those guaranteed by the Fourteenth Amendment to the United States Constitution or infringing upon their rights guaranteed to them by 42 USC § 1981 and § 1983.

E. Grant and award Intervenors their costs and reasonable attorneys' fees and expenses.

F. Award Intervenors all other, different and further relief to which they are entitled.

Respectfully submitted

Stuart & Ward

/s/ JAMES S. WARD

James S. Ward
*Attorney for Intervenors*

OF COUNSEL
Stuart & Wood
1933 Montgomery Highway Suite 200
Birmingham, Alabama 35209
939-0276

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF
ALABAMA, NORTHERN DIVISION

---

CIVIL ACTION NO. 3561-N

PHILLIP PARADISE, JR., INDIVIDUALLY AND ON BEHALF OF THE CLASS SIMILARLY SITUATED, PLAINTIFFS,

UNITED STATES OF AMERICA, PLAINTIFF AND AMICUS CURIAE,

*v.*

JERRY SHOEMAKER, AS DIRECTOR OF THE ALABAMA DEPARTMENT OF PUBLIC SAFETY, ETC., ET AL., DEFENDANTS.

---

**ORDER**

Upon consideration of (i) the defendants' April 21, 1983, motion for extension of time, (ii) the applicants for intervention's April 26, 1983, motion for evidentiary hearing or in the alternative for oral argument, and (iii) the United States of America's April 29, 1983, motion for extension of time, it is ORDERED:

(1) That the April 21, 26 and 29 motions be and they are hereby granted to the extent

(a) That the submission of the April 7, 1983, motion to enforce consent decree and the submission of the April 15, 1983, motion to intervene be and they are hereby continued to May 27, 1983;

(b) That the parties and movants for intervention are allowed until May 6, 1983, to file any responses or briefs in connection with the April 7 and 15 motions; and

(c) That the April 7 and 15 motions be and they are hereby set for oral argument on May 27, 1983, at 10:00 a.m. in the fourth floor courtroom of the federal courthouse in Montgomery, Alabama; and

(2) That the April 21, 26, and 29 motions be and they are hereby denied in all other respects.

DONE, this the 3rd day of May, 1983.

[SIGNATURE]

United States District Judge

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF ALABAMA,
NORTHERN DIVISION

CIVIL ACTION NO. 3561-N

PHILLIP PARADISE, JR., INDIVIDUALLY AND ON BEHALF OF THE CLASS SIMILARLY SITUATED, PLAINTIFFS,

UNITED STATES OF AMERICA, PLAINTIFF AND AMICUS CURIAE,

*v.*

BYRON PRESCOTT, AS DIRECTOR OF THE ALABAMA DEPARTMENT OF PUBLIC SAFETY, ETC., ET AL., DEFENDANTS.

**ORDER**

Upon consideration of the April 15, 1983, motion to intervene, filed by V. E. McClellan, William M. Bailey, D. B. Mansell and Dan Davenport, four white troopers with the Alabama Department of Public Safety; and for good cause, it is ORDERED that the motion be and it is hereby granted to the extent that the movants may participate in these proceedings on a prospective basis only and may not challenge previously entered orders, judgments, and decrees since intervention is untimely as to these; and that the motion be and it is hereby denied in all other respects. *United States v. California Cooperative Canneries*, 279 U.S. 553, 556, 49 S.Ct. 423, 424 (1929); *Smith v. Missouri Pac. R. Co.*, 615 F.2d 683 (5th Cir. 1980). *See Thaggard v. City of Jackson*, 687 F.2d 66, 68 (5th Cir. 1982), *petition for cert. filed*, 51 U.S.L.W. 3635 (U.S. February 16, 1983) (No. 82-1390). *See also* 3B J. Moore & J. Kennedy, Moore's Federal Practice ¶ 24.16[5]; 7A C. Wright & A. Miller, Federal Practice and Procedure § 1920.

DONE, this the 28th day of October, 1983.

[SIGNATURE]
United States District Judge

# IN THE DISTRICT COURT OF THE UNITED STATES FOR THE MIDDLE DISTRICT OF ALABAMA, NORTHERN DIVISION

## CIVIL ACTION NO. 3561-N

PHILLIP PARADISE, JR., INDIVIDUALLY AND ON BEHALF OF THE CLASS SIMILARLY SITUATED, PLAINTIFFS,

UNITED STATES OF AMERICA, PLAINTIFF AND AMICUS CURIAE,

*v.*

BYRON PRESCOTT, AS DIRECTOR OF THE ALABAMA DEPARTMENT OF PUBLIC SAFETY, ETC., ET AL., DEFENDANTS.

V. E. MCCLELLAN, ET AL., DEFENDANT-INTERVENORS.

### ORDER

This cause is now before the court on the plaintiffs' April 7, 1983, motion to enforce the terms of two previously entered consent decrees. A hearing was held on the motion on May 27, 1983. For reasons which follow, the plaintiffs are entitled to relief.

### I.

On February 10, 1972, the court found that the defendant officials of the Alabama Department of Public Safety had "engaged in a blatant and continuous pattern and practice of discrimination in hiring . . . as to troopers." *NAACP v. Allen*, 340 F. Supp. 703, 705 (M.D.Ala. 1972), *aff'd*, 493 F.2d 614 (5th Cir. 1974). The court ordered the defendants to hire one black trooper for each white trooper hired "until approximately twenty-five (25) percent of the Alabama state trooper force is comprised of Negroes." 340 F. Supp. at 706.

On February 16, 1979, a partial consent decree was approved and entered by the court, following a reopening of the case by the plaintiffs. This decree required, among other things, that the defendants institute

> a promotion procedure which is in conformity with the 1978 *Uniform Guidelines of Selection Procedure*, 43 Fed. Reg. 38290, [28 C.F.R. 50.14,] and which, in addition, when used either for screening or ranking will have little or no adverse impact on blacks seeking promotion to corporal.

On August 18, 1981, another consent decree was approved and entered by the court in response to the defendants' request that the court approve their newly developed selection procedure, which included a written examination component. The plaintiffs and the United States had objected to the selection procedure on the ground that it failed to comply with the Uniform Guidelines, as required by the 1979 decree. The 1981 decree provided in relevant part as follows:

> 5. If the selection procedure has little or no adverse impact against black applicants, selections shall be made in rank order. . . . Whether or not the selection procedure has "little or no adverse impact" will be measured by the "four-fifths rule" set forth in Section 4 D of the *Uniform Guidelines, supra*. If the parties cannot agree whether the selection procedure has an adverse impact, the matter shall be submitted to the Court for resolution. No promotions to State Trooper Corporal positions shall be made pending resolution of the question of adverse impact.
>
> 6. If the parties agree, or the Court finds, that the selection procedure has an adverse impact, promotions shall be made in a manner that does not result in adverse impact for the initial group of promotions or cumulatively during use of the procedure. Defendants shall submit to plaintiffs their proposal for making

promotions in conformity with the Partial Consent Decree and with this Decree. If the parties do not agree on the method for making promotions, the matter shall be submitted to the Court for resolution. No promotions to State Trooper Corporal positions shall be made until the parties have agreed in writing or the Court has ruled upon the method to be used for making promotions with little or no adverse impact.

7. If the selection procedure has an adverse impact against blacks seeking promotion to corporal, defendants shall examine the results of each component of the selection procedure to identify the source(s) of the adverse impact and shall revise the procedure so as to avoid adverse impact in the future. Defendants shall provide plaintiffs with data showing the impact of each component of the selection procedure and item-by-item analysis of the impact of the written test. The parties shall attempt to agree upon modifications in the selection procedure for future administrations. If the parties are unable to agree upon the procedure to be used after the first administration of the selection procedure and the method of using that procedure, the matter shall be submitted to the Court for resolution.

After the 1981 decree was approved and entered, the defendants administered the selection procedure to all applicants seeking promotion to corporal. The procedure was administered to 262 persons—202 (77.1%) white persons and 60 (22.9%) black persons. The highest ranked black persons,[1] based on the selection procedure, holds the 80th place on the list of rankings.

There is no dispute among the parties that the defendants need additional corporals and that they need at least 15 of them as soon as possible. The plaintiffs and the

[1] This number includes one trooper, James Cox, whose race is identified as "other."

United States contend that the selection procedure has an adverse impact and, in accordance with the 1981 decree, may not be used by the defendants. The defendants contend that the procedure does not have an adverse impact and may be used.

By another order entered this date the court has allowed four white employees of the Alabama Department of Public Safety to intervene as defendant-intervenors. Their intervention is on a prospective basis only; they are not allowed to challenge prior orders, judgments, and decrees of the court.

II.

Since the parties have been unable to agree on whether the selection procedure has an impermissible adverse racial impact, the court in accordance with the 1981 decree must now make that determination. To determine whether the selection procedure has an adverse impact, the decree refers to the four-fifths rule set forth in section 4 D of the Uniform Guidelines, which provides in relevant part:

> *Adverse impact and the "four-fifths rule."* A selection rate for any race, sex, or ethnic group which is less than four-fifths (4/5) (or eighty percent) of the rate for the group with the highest rate will generally be regarded by the Federal enforcement agencies as evidence of adverse impact, while a greater than four-fifths rate will generally not be regarded by Federal enforcement agencies as evidence of adverse impact.

Applying the four-fifths rule and assuming fifteen candidates are to be promoted in rank order based on the selection procedure results, the success rate for white persons would be 15/202 or 7.4%, and the success rate for black persons would be 0/60 or 0%. Zero is, of course, less than four-fifths of 7.4. Indeed, even if seventy-nine corporals were promoted in rank order, none would be black. Short

of outright exclusion based on race, it is hard to conceive of a selection procedure which would have a greater discriminatory impact.

Also relying on section 4 D, the defendants contend that their selection procedure nonetheless does not have an adverse impact. The portion of the section relied upon provides as follows:

> Greater differences in selection rate may not constitute adverse impact where the differences are based on small numbers and are not statistically significant, or where special recruiting or other programs cause the pool of minority or female candidates to be atypical of the normal pool of applicants from that group.

The defendants contend that the one-to-one hiring ratio for state troopers is a "special program" which has resulted in an atypical pool because black troopers scored lower on a "hiring test" than did white troopers. The defendants contend that the court should afford them an opportunity to show this. The court agrees with the position of the United States and the plaintiffs that a hearing is unnecessary. Accepting the defendants' anticipated evidence as true, this court must nonetheless conclude that the evidence is an unacceptable basis to rest a claim of atypicality. The hiring test, to which the defendants wish to link their promotion procedure, has not been subjected to an adverse impact determination, nor has it been validated.[2]

For the above reasons, the court concludes that the selection procedure has an adverse impact against black candidates. *United States* v. *City of Montgomery,* 19 E.P.D. ¶ 9239, pp. 7412-15 (M.D.Ala. 1979).

---

[2] The defendants do not contend that the candidate pool in some way distorts the labor market to the advantage of the plaintiffs.

## III.

Since the defendants' selection procedure has an adverse impact on black candidates for the position of corporal, the 1981 decree prohibits the defendants' use of the procedure. Furthermore, the defendants are now required by the decree to fashion and submit to the court a proposal to promote to corporal, from among qualified candidates, at least 15 persons in a manner which which will not have adverse impact. And if the plaintiffs, the United States, and the defendants cannot agree to a promotion plan, they are required by the decree to submit the matter to the court for resolution.

As already noted, this lawsuit is now before the court on the plaintiffs' motion to enforce the terms of two previously entered decrees. The court will grant the plaintiffs' motion to enforce to the extent the motion seeks compliance with the immediately preceding requirements in the 1981 decree. An appropriate order will be entered declaring that the selection procedure has an adverse racial impact and may not be used by the defendants; requiring that the defendants submit an appropriate proposal for the needed promotions; and setting a deadline for submission of the matter to the court if the plaintiffs, the United States, and the defendants are unable to agree upon a promotion plan. If the plaintiffs, the United States, and the defendants should agree to a promotion plan, the plaintiff-intervenors will be allowed an opportunity to file responses and objections to the plan.

Also, as a result of the finding of adverse impact, the defendants are required by the 1981 decree to "examine the results of each component of the selection procedure to identify the sources of the adverse impact," to "revise the procedure so as to avoid adverse impact in the future," to "provide plaintiffs with data showing the impact of each component of the selection procedure and an item-by-item analysis of the impact of the written test," and, if the par-

ties cannot agree upon modifications to cure the adverse impact, to petition the court to resolve the disputed matters. It does not appear, however, that the plaintiffs—who are the movants at this stage of the proceedings—are seeking enforcement of this part of the 1981 decree, and the court will therefore not enter an order compelling enforcement.[3]

Accordingly, for the above reasons, it is ORDERED:

(1) That the plaintiffs' April 7, 1983, motion to enforce the terms of the February 16, 1979, partial consent decree and the August 18, 1981, consent decree, be and it is hereby granted to the extent hereafter set forth;

(2) That it is hereby declared that the defendants' selection procedure for promotion to corporal has an adverse racial impact and that said selection procedure may not be used by the defendants for promotion purposes;

(3) That on or before November 10, 1983, the defendants shall file with the court a plan to promote to corporal, from qualified candidates, at least 15 persons in a manner that will not have an adverse racial impact;

(4) That on or before November 18, 1983, the plaintiffs, the United States, and the defendant-intervenors may file any objections and counter-proposals;

(5) That, if by November 25, 1983, the plaintiffs, the United States, and the defendants have not filed a promotion plan agreed to by all said parties, the issue of corporal promotions shall be deemed submitted for resolution by the court; and

(6) That, if the plaintiffs, the United States, and the defendants file an agreed-to promotion plan, the defend-

---

[3] However, if the plaintiffs are seeking enforcement of the part of the 1981 decree regarding modifications of the selection procedure, then the plaintiffs should file a pleading so indicating.

Also, if the defendants desire to invoke this part of the decree then they need only carry out their responsibilities under this part and, if the parties are unable to agree upon the modifications, petition the court to resolve the matter.

ant-intervenors are allowed seven days from the date of filing to file any responses and objections to the plan.

DONE, this the 28th day of October, 1983.

[Signature]

United States District Judge

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

---

CIVIL ACTION NO. 3561-N

PHILLIP PARADISE, JR., INDIVIDUALLY AND ON BEHALF OF THE CLASS SIMILARLY SITUATED, PLAINTIFFS

UNITED STATES OF AMERICA, PLAINTIFF AND AMICUS CURIAE

*v.*

BYRON PRESCOTT, AS DIRECTOR OF THE ALABAMA DEPARTMENT OF PUBLIC SAFETY, ETC., ET AL., DEFENDANTS

V. E. MCCLELLAN, ET AL., DEFENDANT-INTERVENORS

**PROPOSED PROMOTION PROCEDURE**

This cause is now before the Court on the Court's October 28, 1983 Order which provided that "the defendants shall file with the Court a plan to promote to Corporal, from qualified candidates, at least fifteen (15) persons in a manner that will not have an adverse racial impact". Pursuant to the Order, this defendant submits to the Court herewith a proposal for making promotions to Corporal within the Department of Public Safety. The defendant, the Department of Public Safety, proposes to make promotions to Corporal as follows:

1. The defendant, the Department of Public Safety, proposes to promote to Corporal fifteen (15) troopers. Of these fifteen (15) individuals promoted, the defendant proposes to promote eleven (11) whites and four (4) blacks, on a one time basis only. In support of this proposal, the defendant would say:

(a) That by promoting four (4) blacks and eleven (11) whites the requirements of the four-fifths rule of the Uni-

form *Guidelines* concerning adverse impact is met;

(b) That this percentage of blacks to whites reflects the percentage of blacks to whites who took the Corporal's examination;

(c) That there is an immediate need for at least fifteen (15) Corporals to be promoted within the Department of Public Safety; and,

(d) That this procedure should only be used for this initial group of promotions.

(e) That this defendant, while it does not waive any objections previously made, proposes that the selections will be made from the current Corporal Promotion List, in rank order, utilizing the "rule of three" as provided in the Alabama Merit System Law. The promotion of black candidates will necessarily be made by consideration of black candidates in the order in which they appear on the current promotional register.

(f) The Department of Public Safety does not agree that this method is an appropriate method for promotion of candidates based on merit and request the Court to enter an Order permitting the Department of Personnel of the State of Alabama to develop a procedure for promoting Troopers to Corporals in a nondiscriminatory manner for use in subsequent promotions. Said procedure to be submitted to the Court for *prior* approval within a specified time period. The defedant, Department of Public Safety, will cooperate with the Department of Personnel in developing such a promotional procedure in order that such be accomplished as soon as possible.

Respectfully submitted,

By: EDWARD L. HARDIN, JR.

Edward L. Hardin, Jr.,
Special Assistant Attorney
General for Alabama Department of Public Safety

OF COUNSEL:
Edward L. Hardin, Jr.
Hardin & Hollis
1825 Morris Avenue
Birmingham, Alabama 35203
Telephone: (205) 328-2675

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the above and foregoing Proposed Promotion Procedure has been served upon all counsel of record by placing same in the United States mail, postage prepaid and properly addressed on this the 10th day of November, 1983.

/s/ EDWARD L. HARDIN, JR.
Edward L. Hardin, Jr.

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

---

CIVIL ACTION NO. 2561-N

PHILLIP PARADISE, JR., INDIVIDUALLY AND ON BEHALF OF THE CLASS SIMILARLY SITUATED, PLAINTIFFS

UNITED STATES OF AMERICA, PLAINTIFF AND AMICUS CURIAE

*v.*

BYRON PRESCOTT, AS DIRECTOR OF THE ALABAMA DEPARTMENT OF PUBLIC SAFETY, ETC., ET AL., DEFENDANTS

V. E. MCCLELLAN, ET AL., DEFENDANT-INTERVENORS

**ORDER**

In accordance with the memorandum opinion entered this date, it is the ORDER, JUDGMENT, and DECREE of the court:

(1) That the plaintiffs' April 7, 1983, motion to enforce the terms of the February 16, 1979, partial consent decree and August 18, 1981, consent decree, be and it is hereby granted to the extent hereafter set forth;

(2) That the defendants and their agents and employees be and each is hereby enjoined and restrained from failing to promote from this day forward, for each white trooper promoted to a higher rank, one black trooper to the same rank, if there is a black trooper objectively qualified to be promoted to the rank;

(3) That this promotion requirement shall remain in effect as to each trooper rank above the entry-level rank until either approximately 25% of the rank is black or the defendants have developed and implemented a promotion plan for the rank which meets the prior orders and decrees of the court and all other relevant legal requirements;

(4) That within 35 days from the date of this order the defendants shall submit to the court for the court's approval a schedule for the development of promotion procedures for all ranks above the entry-level position;

(5) That the plaintiffs be and they are hereby allowed 21 days from this date to file a request for interim attorney fees, which request shall be supported by affidavits and shall address each of the criteria set forth in *Hensley* v. *Eckerhart*, __ U.S. __, 103 S.Ct. 1933 (1983), and *Johnson* v. *Georgia Highway Express, Inc.*, 488 F.2d 714 (5th Cir. 1974); and

(6) That all other relief requested by the plaintiffs in their motion and not specifically granted be and it is hereby denied.

DONE, this the 15th day of December, 1983.

[SIGNATURE]

United States District Judge

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

---

CIVIL ACTION NO. 3561-N

PHILLIP PARADISE, JR., INDIVIDUALLY AND ON BEHALF OF THE CLASS SIMILARLY SITUATED, PLAINTIFFS

UNITED STATES OF AMERICA, PLAINTIFF AND AMICUS CURIAE,

*v.*

BYRON PRESCOTT, AS DIRECTOR OF THE ALABAMA DEPARTMENT OF PUBLIC SAFETY, ETC., ET AL., DEFENDANTS

V. E. MCCLELLAN, ET AL., DEFENDANT-INTERVENORS

**MEMORANDUM OPINION**

The present phase of the proc edings in this lawsuit began on April 7, 1983, when the plaintiffs filed a motion to enforce the terms of two previously entered consent decrees. In accordance with these decrees and as a result of recent developments, this court must determine what procedure the Alabama Department of Public Safety must use in promoting troopers. The court understands that the department is in need of at least 15 new corporals immediately.

I.

In 1972, then Chief District Judge Frank M. Johnson, Jr., remarked in this case that "[i]n the thirty-seven-year history of the patrol there has never been a black trooper and the only Negroes ever employed by the department have been nonmerit system laborers." *NAACP* v. *Allen*, 340 F. Supp. 703, 705 (M.D. Ala. 1972). The court found

that the department had "engaged in a blatant and continuous pattern and practice of discrimination in hiring . . . both as to troopers and supporting personnel;" and the court ordered that the department hire one black trooper for each white trooper hired "until approximately twenty-five (25) percent of the Alabama state trooper force is comprised of Negroes." *Id.* at 705, 706. The order was affirmed on appeal. 493 F.2d 614 (5th Cir. 1974).

In a later proceeding in this case, Judge Johnson was asked to clarify "whether the twenty-five percent hiring quota applies to the entire state trooper force or just to entry-level troopers." *Paradise* v. *Shoemaker,* 470 F. Supp. 439, 440 (M.D. Ala. 1979). The court responded that "there is no ambiguity" and that the twenty-five percent quota applies "to the entire force of sworn officers, not just to those in the entry-level rank." *Id.* at 440-41. The court observed that the defendants were guilty of discrimination not just in hiring, but in all ranks of the patrol. The court then emphasized that,

> One continuing effect of that discrimination is that, as of November 1, 1978, out of 232 state troopers at the rank of corporal or above, *there is still not one black.* The quota fashioned by the Court provides an impetus to promote blacks into those positions. To focus only on the entry-level positions would be to ignore that past discrimination by the Department was pervasive, that its effects persist, and that they are manifest.

*Id.* at 442 (emphasis in original).

On February 16, 1979, the parties entered into a consent decree which required that the department develop and implement a valid promotion procedure for the rank of corporal. The decree gave the department a year to meet this objective, after which the department was to do the same, in turn, for the ranks of sergeant, lieutenant, captain and major. This time schedule was not met, and on

August 18, 1981, the parties entered into another consent decree which allowed the department to administer a newly developed promotion procedure for the rank of corporal, but prohibited any promotions under the procedure until it had been first determined that the procedure had "little or no adverse impact against black applicants." According to the decree, adverse impact was to be determined and measured by the "four-fifths rule" set forth in Section 4 D of the Uniform Guidelines of Employee Selection Procedures, 28 C.F.R. § 50.14 (1983).

On April 7, 1983, the plaintiffs filed a motion seeking enforcement of the 1979 and 1981 consent decrees and, in particular, a determination whether the department's promotion procedure for corporal had an adverse racial impact. The department needed at least 15 new corporals, and the parties were unable to agree whether the procedures developed in 1981 could be used for the promotions. On October 28, 1983, the court found that the procedure did have an adverse racial impact on black applicants and, in accordance with the 1981 consent decree, prohibited use of the procedure.

The parties have been unable to agree upon another selection procedure for the 15 needed corporals; and, as required by the 1981 consent decree, they have requested that the court fashion a procedure.

II.

On February 10, 1984, less than two months from today, twelve years will have passed since this court condemned the racially discriminatory policies and practices of the Alabama Department of Public Safety. Nevertheless, the effects of these policies and practices remain pervasive and conspicuous at all ranks above the entry-level position. Of the 6 majors, *there is still not one black.* Of the 25 captains, *there is still not one black.* Of the 35 lieutenants, *there is still not one black.* Of the 65 sergeants,

*there is still not one black.* And of the 66 corporals, *only four are black.* Thus, the department *still* operates an upper rank structure in which almost every trooper obtained his position through procedures that totally excluded black persons. Moreover, the department is *still* without acceptable procedures for advancement of black troopers into this structure, and it does not appear that any procedures will be in place within the near future. The preceding scenario is intolerable and must not continue. The time has now arrived for the department to take affirmative and substantial steps to open the upper ranks to black troopers.

In light of the severe racial imbalances in the upper ranks, the court agrees with the plaintiffs that for a period of time at least 50% of all those promoted to corporal and above must be black troopers, as long as there are qualified black troopers available.[1] The court also agrees with the plaintiffs that if there is to be within the near future an orderly path for black troopers to enter the upper ranks, any relief fashioned by the court must address the department's delay in developing acceptable promotion procedures for all ranks. The court will therefore enter an order requiring that, for each white trooper promoted to a higher rank, the department shall promote one black trooper to the same rank, if there is a black trooper objectively qualified for the promotion. This requirement shall remain in effect as to each rank above entry level until either 25% of the rank is black or the department has developed and implemented for the rank a promotion procedure which meets the requirements of the prior orders

---

[1] In light of the department's failure after almost twelve years to eradicate the continuing effects of its own discrimination and to develop acceptable promotion procedures and in light of the severity of the existing racial imbalances, a credible argument could be made that all 15 of the new corporals should be black, followed perhaps by a one-to-one ratio. However, the plaintiffs are not seeking this relief.

and decrees of this court and all other relevant legal requirements.[2] The court will also require that the department submit to the court for the court's approval a schedule for the development of promotion procedures for all ranks above the entry-level position. The schedule should be based upon realistic expectations.

III.

The relief fashioned by the court today is warranted by law. Where there has been unlawful discrimination, a district court has not only the power but the responsibility to fashion a remedy that will as much as possible eliminate the discriminatory effects of past discrimination as well as bar like discrimination in the future. *Albemarle Paper Co.* v. *Moody,* 422 U.S. 405, 418, 95 S.Ct. 2362, 2372 (1972). As the evidence in the present case dramatically demonstrates, these effects will not wither away of their own accord. Furthermore, in fashioning relief, a court should include race-conscious requirements if they are necessary, reasonable, and otherwise appropriate under the circumstances.[3] *United States* v. *City of Miami,* 664 F.2d 435 (5th Cir. Dec. 3, 1981) (en banc) (former Fifth Circuit); *United States* v. *City of Alexandria,* 614 F.2d 1358 (5th Cir. 1980).

---

[2] According to the *1980 Census of Population* published by the U.S. Department of Commerce, the State of Alabama is approximately 26% black. In *International Brotherhood of Teamsters* v. *United States,* 431 U.S. 324, 340 n. 20, 97 S.Ct. 1843, 1857 n.20 (1977), the Supreme Court stated that "absent explanation, it is ordinarily to be expected that nondiscriminatory hiring practices will in time result in a work force more or less representative of the racial and ethnic composition of the population in the community from which employees are hired."

[3] In an earlier order this court demonstrated dramatically the efficacy of quotas, over other remedies, in instances where blacks have historically been completely excluded or almost completely excluded from employment. *NAACP* v. *Dothard,* 373 F. Supp. 504 (M.D.Ala. 1974) (Johnson, C.J.)

The promotional quotas imposed by the court today are clearly necessary. The racial imbalances in the upper ranks of the Alabama Department of Public Safety remain egregious and are now of long duration; and, furthermore, it is apparent from the history of this lawsuit that without immediate, affirmative, race-conscious action these intolerable disparities will not dissipate within the near future.

The promotional quotas are also reasonable. They are specifically tailored to redress the continuing effects of past discrimination, but they do "not unnecessarily trammel the interest of white employees." [4] *United Steelworkers* v. *Weber,* 443 U.S. 193, 208-09, 99 S.Ct. 2721, 2730 (1979). They do not require the discharge or demotion of a white trooper or his replacement with a black trooper; nor do they create an absolute bar to the advancement of white troopers. Moreover, the quotas are but a temporary measure, designed not to maintain a racial balance, but simply to eliminate a manifest and chronic racial imbalance. Finally, only qualified black troopers will be considered for promotion under the quotas. *See, e.g., United Steelworkers* v. *Weber, supra; United States* v. *City of Miami, supra; United States* v. *City of Alexandria, supra.*

The quotas imposed by the court are also not without legal precedent. In *United States* v. *City of Alexandria, supra,* the former Fifth Circuit approved a consent decree

---

[4] The court has allowed four white troopers to intervene as defendant-intervenors. Their intervention is on a prospective basis only; they are not allowed to challenge prior orders, judgments, and decrees of the court. *United States* v. *California Co-operative Canneries,* 279 U.S. 553, 556, 49 S.Ct. 423, 424 (1929); *Smith* v. *Missouri Pac. R. Co.,* 615 F.2d 683 (5th Cir.1980). *See Thaggard* v. *City of Jackson,* 687 F.2d 66, 68 (5th Cir. 1982), *cert. denied sub nom. Ashley* v. *City of Jackson,* __ U.S. __, 104 S.Ct. 255 (1983). *See also* 3B J. Moore & J. Kennedy, Moore's Federal Practice ¶ 24.16 [5]; 7A C. Wright & A. Miller, Federal Practice and Procedure § 1920.

imposing on a municipality promotional quotas ranging from 25 to 50%. Under the decree, the quotas are to remain in effect until the municipality achieves the same percentages of blacks and women as are in the overall work force in the affected localities. *See also, e.g., E.E.O.C.* v. *American Telephone and Telegraph Company,* 556 F.2d 167 (3rd Cir. 1977), *cert. denied,* 439 U.S. 915, 98 S.Ct. 3145 (1978).

Two factors in the present case make the claim for promotional quotas even stronger than it was in *City of Alexandria.* In contrast to the earlier case, here the court has made a specific finding of long-term, open and pervasive racial discrimination. Moreover, this court has before it a record demonstrating that without promotional quotas the continuing effects of this discrimination cannot be eliminated. Nevertheless, the quotas imposed by this court are substantially less constraining than those imposed in *City of Alexandria.* Under the order this court will enter today, the Alabama Department of Public Safety has the prerogative to end the promotional quotas at any time, simply by developing acceptable promotion procedures. It is thus possible for the use of the quotas to be a one-time occurrence.

## IV.

Finally, as this lawsuit moves into its twelfth year, it is clear that the court and the parties should now contemplate bringing this litigation to an end. The court therefore hopes that, in addition to achieving the above objectives, the remedy imposed today will hasten the day when the Alabama Department of Public Safety is no longer under the supervision of this court.

An appropriate order will be entered in accordance with this memorandum opinion.

DONE, This the 15th day of December, 1983.

[SIGNATURE]

United States District Judge

# IN THE DISTRICT COURT OF THE UNITED STATES FOR THE MIDDLE DISTRICT OF ALABAMA NORTHERN DIVISION

---

## CIVIL ACTION NO. 3561-N

PHILLIP PARADISE, JR., INDIVIDUALLY AND ON BEHALF OF THE CLASS SIMILARLY SITUATED, PLAINTIFFS

UNITED STATES OF AMERICA, PLAINTIFF AND AMICUS CURIAE

*v.*

BYRON PRESCOTT, AS DIRECTOR OF THE ALABAMA DEPARTMENT OF PUBLIC SAFETY, ETC., ET AL., DEFENDANTS

V. E. MCCLELLAN, ET AL., DEFENDANT-INTERVENORS

**ORDER**

The court now has before it several motions seeking reconsideration or, in the alternative, a stay pending appeal of the court's December 15, 1983, order imposing a temporary promotional quota on the Alabama Department of Public Safety. A hearing was held on the motions on January 5, 1984.*

Since the opinion accompanying the December 15 order addressed in detail most of the issues raised by the motions, the court will now address only those issues not addressed earlier or in need of further explanation.

Of particular concern to the court is the department's new contention that it "is without legal authority and sufficiently trained personnel to design any promotional procedures." The Department of Public Safety now maintains that this "function is allocated by statute to the Depart-

---

* Although some motions were not filed until January 6, they were argued on January 5. At the January 5 hearing the court was informed that the additional motions were forthcoming.

ment of Personnel of the State of Alabama." In 1979 and 1981, the Public Safety Department entered into consent decrees providing for advancement of black troopers into the upper ranks of the patrol. The decrees require the department to fashion acceptable promotion procedures. The department's counsel acknowledged at the January 5 hearing that it was anticipated that development of these procedures would take only a few months. It is now years later and this court will not entertain the excuse that the department is now without legal authority to meet its obligations under the consent decrees. The department entered into the consent decrees and now has no right to refute those decrees. Moreover, the Department of Personnel, which is also a party to these proceedings, assured the court at the January 5 hearing that it would work closely with the Public Safety Department to develop acceptable promotion procedures. The Public Safety Department's contention that it is without legal authority is not only meritless, it is frivolous.

Moreover, that the Department of Public Safety would even advance this argument dramatically demonstrates the need for the relief imposed by this court. Such frivolous arguments serve no purpose other than to prolong the discriminatory effects of the department's 37-year history of racial discrimination. As the court stated in its December 15 opinion,

> the department is *still* without acceptable procedures for advancement of black troopers into this structure, and it does not appear that any procedures will be in place within the near future. The preceding scenario is intolerable and must not continue. The time has now arrived for the department to take affirmative and substantial steps to open the upper ranks to black troopers.

The Public Safety Department also seeks clarification of the words "qualified black trooper" in the court's Decem-

BEST AVAILABLE COPY



ber 15 opinion and order. Counsel for the department stated at the January 5 hearing that while he thought he understood what the court meant, he was not certain. The court sees no need for clarification at this time. The proper procedure for the department and its counsel is to submit to opposing counsel their understanding of the words. Unless the parties differ on the meaning of the words, there is no need to clarify them.

Furthermore, the court sees no need to stay its December 15 order. All parties, except defendant-intervenors, agree that at least 4 of the 15 new corporals must be black. The December 15 order requires that 7 or 8 be black. Thus, the immediate impact of the order is to increase the number of black corporals by 3 or 4. These promotions come after almost half a century in which blacks have been unable to enter the upper ranks of the troopers: For 37 years the department operated under a regime of racism which totally excluded blacks from all ranks in the patrol; and for the last 12 years there have been no acceptable promotion procedures by which blacks could advance in the patrol. In light of this history, the 7 or 8 black troopers promoted as a result of the December 15 order are, if anything, far from enough; and to decrease this number now would be nothing less than a "blow upon a wound."

Moreover, the equities, when balanced, favor keeping in place the temporary promotional quota imposed by the court. Black persons waited almost half a century to get the 7 or 8 promotions required by the December 15 order. Surely, those dissatisfied with the relief can wait the few months needed for appellate review. And should the appellate court find the relief imposed by this court is inappropriate, adjustments can be made in future promotions to correct the effects of this court's relief.

Finally and perhaps most significantly, it appears likely that the temporary promotional quota will not extend beyond the present 15 promotions. At the January 5 hearing,

the Personnel Department pledged that it would *now* devote its full resources to assisting the Public Safety Department in not only developing acceptable promotion procedures as required by the consent decrees, but in doing so within the near future. If these two departments hold fast to this promise, the temporary promotional quota should be, as this court hoped and expressed in the December 15 opinion, "a one-time occurrence." It thus appears that the December 15 order will have an effect which will please *all* parties: the development of acceptable promotion procedures and the mooting of the temporary promotional quota. This is not the time to stay the order.

Accordingly, it is ORDERED that the following motions be and they are hereby denied: defendant-intervenors' January 6, 1984, motion to stay; the United State's January 6, 1984, motion to stay; defendant Prescott, et al.'s December 27, 1983, motion to alter or amend judgment and stay of order; defendant Alabama Personnel Director's December 27, 1983, motion for reconsideration; defendant-intervenors' December 27 and 30, 1984, motions to alter or amend and to stay enforcement; and the United State's December 23, 1983, motion to alter or amend judgment.

DONE, this the 13th day of January, 1984.

[SIGNATURE]

United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

---

CIVIL ACTION NO. 3561-N

PHILLIP PARADISE, JR., ETC., PLAINTIFFS

UNITED STATES OF AMERICA, PLAINTIFF AND AMICUS CURIAE,

*v.*

BYRON PRESCOTT, ETC., ET AL., DEFENDANTS

V. E. MCCLELLAN, ET AL., DEFENDANT-INTERVENORS.

**STATEMENT OF COMPLETION OF PROCEDURE FOR PROMOTION TO RANK OF CORPORAL**

Comes now Byron Prescott, Director of the Alabama Department of Public Safety, by and through his attorney of record and states to this Honorable Court as follows:

(1) that the procedure designed for use in selecting candidates for promotion to the rank of Corporal has been completed;

(2) that the procedure has been implemented;

(3) that a final ranking of candidates eligible for promotion has been completed; and

(4) that the selection procedure conforms with the applicable statutes and Orders entered in this case.

As a result of this procedure, thirteen (13) persons have been certified as "best qualified" for promotion to Corporal. From this number, the Director will select the per-

sons to be promoted as the need for Corporals arises, if the procedure is approved for use by this Court.

Respectfully submitted,

HARDIN & HOLLIS

/s/ EDWARD L. HARDIN, JR.

Edward L. Hardin, Jr.,
Of Counsel for Defendants

OF COUNSEL:
Edward L. Hardin, Jr.
Hardin & Hollis
Post Office Box 11328
Birmingham, Alabama 35202-1328
Telephone: (205) 328-2675

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the above and foregoing Motion has been served upon all counsel of record, as below listed, by placing a copy of same in the United States mail, postage prepaid and properly addressed on this the 18th day of June, 1984:

Dennis N. Balske
1001 South Hull Street
Post Office Box 2087
Montgomery, Alabama 36103-2087

Louise A. Lerner, Esquire
Department of Justice
Post Office Box 23991
L'Enfant Plaza
Washington, D.C. 20026-3991

James S. Ward, Esquire
Ward & McKnight
2100 16th Avenue South
Suite 302
Birmingham, Alabama 35205

EDWARD L. HARDIN, JR.

Of Counsel

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

---

CIVIL ACTION NO. 3561-N

PHILLIP PARADISE, JR., ETC., PLAINTIFFS

UNITED STATES OF AMERICA, PLAINTIFF AND AMICUS CURIAE,

*v.*

BYRON PRESCOTT, ETC., ET AL., DEFENDANTS

V. E. MCCLELLAN, ET AL., DEFENDANT-INTERVENORS.

**MOTION TO APPROVE SELECTION PROCEDURE FOR PROMOTION TO CORPORAL**

Comes now Byron Prescott, as Director, Alabama Department of Public Safety, and moves this Honorable Court for an Order approving the procedure designed for use in selecting persons best qualified for promotion from the rank of State Trooper to Corporal and to authorize the Director of the Department to promote persons from the list of persons ranked "best qualified" to the rank of Corporal as the need arises.

Counsel for this Defendant has kept counsel for the Plaintiffs generally informed of the procedure used and will furnish counsel any additional information requested upon receipt of ~~an~~ Order from this Court that all confidential information not be disclosed to any other person unless specifically approved by the Court.

Counsel for this Defendant requests that the Court order all hearings held in connection with this motion be confidential in order to protect the validity of the selection procedure utilized. If confidentiality is not maintained,

certain aspects of the procedure could not be used in the future.

Respectfully submitted,
HARDIN & HOLLIS
/s/ EDWARD L. HARDIN, JR.
Edward L. Hardin, Jr.,
Of Counsel for Defendants

OF COUNSEL:
Edward L. Hardin, Jr.
Hardin & Hollis
Post Office Box 11328
Birmingham, Alabama 35202-1328
Telephone: (205) 328-2675

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the above and foregoing Motion has been served upon all counsel of record, as below listed, by placing a copy of same in the United States mail, postage prepaid and properly addressed on this the 18th day of June, 1984:

Dennis N. Balske
1001 South Hull Street
Post Office Box 2087
Montgomery, Alabama 36103-2087

Louise A. Lerner, Esquire
Department of Justice
Post Office Box 23991
L'Enfant Plaza
Washington, D.C. 20026-3991

James S. Ward, Esquire
Ward & McKnight
2100 16th Avenue South
Suite 302
Birmingham, Alabama 35205

/s/ EDWARD L. HARDIN, JR.
Of Counsel

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

---

CIVIL ACTION NO. 3561-N

PHILLIP PARADISE, JR., ETC., PLAINTIFFS

UNITED STATES OF AMERICA, PLAINTIFF AND AMICUS CURIAE,

*v.*

BYRON PRESCOTT, ETC., ET AL., DEFENDANTS

V. E. MCCLELLAN, ET AL., DEFENDANT-INTERVENORS.

**RESPONSE TO DEFENDANT PRESCOTT'S MOTION TO APPROVE SELECTION PROCEDURE FOR PROMOTION TO CORPORAL**

Come now the defendant-intervenors in the above styled cause, by and through their attorney of record, and pursuant to this Court's Order of June 21, 1984, submit the following as their response to defendant Prescott's Motion to Approve Selection Procedure for Promotion to Corporal:

1. While defendant Prescott may have kept counsel for the plaintiffs generally informed of the procedure used for promotion for corporal, the intervenors have been told nothing, they have been informed of nothing and have not in any way been privy to the procedure used. Consequently, without being allowed to conduct some discovery or to be fully informed of the procedure utilized, the intervenors are not in a position to assert whether they approve of the promotion system to be utilized.

2. Without being informed of or having the knowledge

of the procedure utilized for promotion to corporal, the intervenors would object to any promotions which are based on any factor other than merit and would object to any promotion system which in any way violates the rights guaranteed to them by state or federal law or by the United States Constitution. Further, intervenors would object to any selection procedure for promotion to corporal which benefits, to the detriment of the intervenors, persons who have not shown to be actual victims of discrimination in promotion. Defendant-intervenors further object to the utilization of any selection procedure for promotion to corporal or for an Order approving the same which goes beyond the remedial authority and policy of § 706(g) of Title VII as recently expressed by the United States Supreme Court in *Memphis Fire Department, et al.*, v. *Stotts,* 52 U.S.L.W. 4767, 4771-4773 (June 12, 1984).

3. The consent decrees previously entered in this cause were done so when the defendant-intervenors were not parties to this litigation, yet those decrees substantially affect their rights to employment and career aspirations. The consent decrees previously entered in this cause also impose a racial quota or preference in any promotional scheme to corporal. This is so because no matter how content valid, scrupulously fair or otherwise valid the corporal examination may be, rank order promotion will not be allowed if a finding of adverse impact against blacks is made, that finding to be determined by the utilization of the four-fifths rule. As a result, promotions will then be made by "awarding" to blacks, at the expense and to the detriment of the intervenors, who are either equally or better qualified, guaranteed promotions. This system of racial quota or preference in promotion, by the utilization of the four-fifths rule, ignores not only the content validity of any examination, but more importantly the now imperative requirement that any black afforded preferential treatment in promotion, be an actual victim or discrimina-

tion in promotion. See *Memphis Fire Department, et al.*, v. *Stotts,* 52 U.S.L.A. 4767 (June 12, 1984).

It then follows, based on *Stotts,* supra., that any corporal promotional scheme pursuant to the previously entered consent decrees which allows a black to be promoted over an equally or better qualified white, simply because he is black, without a showing that he was an actual victim of discrimination in promotion, violates the defendant-intervenors rights as guaranteed by state and federal law and the United States Constitution and goes beyond the remedial authority granted unto District Courts by § 706(g) of Title VII.

Consequenly, any corporal promotion or Orders allowing corporal promotion pursuant to the previously entered consent decrees which set aside guaranteed places for blacks or which allow blacks to be promoted over equally or better qualified whites, simply because that person was black, without any showing that that person was an actual victim of discrimination in promotion, is invalid. See *Memphis Fire Department, et al.*, v. *Stotts,* 52 U.S.L.W. 4767 (June 12, 1984).

Moreover, and as a result of *Stotts,* supra., the consent decrees must now be modified to allow promotions to corporal only in a manner that does not violate the rights of the defendant-intervenors and in a way which does not exceed the remedial authority granted unto District Courts by § 706(g) of Title VII or the policy behind the same as expressed in *Stotts,* supra.

4. Defendant-intervenors would object to any promotion until it can be determined that any promotional schemes would be in accordance with the principals set forth by the United States Supreme Court in *Memphis Fire Department, et al.*, v. *Stotts,* 52 U.S.L.W. 4767 (June 12, 1984) and request that the consent decrees previously entered, after discovery and hearing, be modified in accordance with that opinion.

5. For that defendant Prescott states that the selection procedure conforms with applicable statutes and Orders entered in this case. If by this it is meant that the procedure conforms with the previously entered consent decrees, defendant-intervenors object on the grounds heretofore stated.

Respectfully submitted,

Ward & McKnight

/s/ JAMES S. WARD

James S. Ward
*Attorney for*
*defendant-intervenors*
*2100 16th Avenue South*
*Birmingham, Alabama 35205*
*(205) 933-7000*

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the above and foregoing Response has been served upon all counsel of record, as below listed, by placing a copy of same in the United States mail, postage prepaid and properly addressed on this the 27th day of June, 1984:

John Bell
U.S. Attorney
P.O. Box 711
Montgomery, AL
36101

Dennis N. Balske
1001 South Hull Street
Post Office Box 2087
Montgomery, Alabama
36103-2087

Richard Meadows
Assistant Attorney General
Office of Attorney General
Montgomery, Alabama
36101

Edward L. Hardin, Jr.
Hardin & Hollis
Post Office Box 11328
Birmingham, Alabama
35202-1328

Louise A. Lerner
Department of Justice
Post Office Box 23991
L'Enfant Plaza
Washington, D.C. 20026-3991

/s/ JAMES S. WARD

James S. Ward

IN THE UNITED STATES DISTRICT COURT FOR
THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

---

CIVIL ACTION NO. 3561-N

PHILLIP PARADISE, JR., INDIVIDUALLY AND ON BEHALF OF THE CLASS SIMILARLY SITUATED, PLAINTIFFS

UNITED STATES OF AMERICA, PLAINTIFF AND AMICUS CURIAE,

*v.*

BYRON PRESCOTT, AS DIRECTOR OF THE ALABAMA DEPARTMENT OF PUBLIC SAFETY, ETC., ET AL., DEFENDANTS

V. E. MCCLELLAN, ET AL., DEFENDANT-INTERVENORS.

**PLAINTIFFS' RESPONSE TO DEFENDANTS' MOTION TO APPROVE SELECTION PROCEDURE FOR PROMOTION TO CORPORAL**

On June 18, 1984, defendants filed a Statement of Completion of Procedure for Promotion to Rank of Corporal, along with a Motion to Approve Selection Procedure for Promotion to Corporal. These pleadings were filed in compliance with a February, 1984 schedule for the development of promotion procedures, in which defendants agreed to develop a promotion procedure for the position of corporal within five months that would have little or no adverse impact on black promotion applicants.

Due to the confidential nature of the data involved here, defendants have requested an order from this court insuring confidentiality of any data they provide to plaintiffs, before they will release any of it to plaintiffs. Accordingly, plaintiffs hereby request any and all data in the possession of defendants that will enable plaintiffs to evaluate this new procedure, including but not limited to:

1. The rankings of promotional candidates, including appropriate racial designations;

2. A copy of the written examination that was administered, along with any relevant validation data;

3. A written description of the entire procedure;

4. The names, races and qualifications of the three persons who served as interviewer/panelists.

5. A list of the questions asked by the panelists during interviews, including all relevant validation data for each question;

6. Copies of any and all forms/records kept by panelists during interview sessions, or any other relevant documents reflecting written accounts of the individual evaluations given by the panel and individual panelists.

7. The name, address, and qualifications of the person(s) responsible for the development of this procedure, as well as copies of all written documents/reports authored by this person with respect to the procedure under review.

8. All documents, reports, etc. prepared by officials and/or agents of the defendants respecting this procedure, including but not limited to writings and data supplied to defendants' expert(s) and interview panelists and documents exchanged between Department officials/agents.

9. Copies of all written instructions given to defendants' expert(s) and interview panelists, as well as descriptions of any oral instructions.

10. A written description of how selections will be made from the list of 13 "best qualified" candidates, including a statement of any affirmative action commitment defendants will undertake in order to comply with the "little or no adverse impact on blacks" provisions of the 1979 and 1981 decrees.

11. Copies of any and all evaluations of the new test/procedure that were procured from applicants by defendants, including designations of the race of those mak-

ing such evaluations and a statement of the purpose for which these evaluations were procured.

12. Copies of any and all documents exchanged between the Department of Public Safety and the Department of Personnel regarding any and all of the matters listed above, as well as any documents exchanged between the Department of Personnel and defendants' expert(s) and interview panelists.

13. A statement of whether and, if so, how the rule of three will be followed in the selections of promotion candidates.

14. Any and all other written documents relevant to the implementation of defendants' new promotion procedure not specifically requested above, that are in the possession of the Alabama Department of Public Safety, the Department of Personnel, and/or any and all officials/agents of those Departments, or that were retained/commissioned by those Departments, with respect to this promotion procedure.

15. A projection of the life of this promotion list, as well as a description of the relevant factors which will determine its life.

16. A description of any and all supervisory training programs developed, and/or implemented by defendants to train troopers for entry into supervisory positions, including but not limited to the affirmative action goals which are involved and future plans for this or any other supervisory training programs.

17. A statement of reasons why the proposed procedure will have little or no adverse impact on black applicants for promotion, both under the present and future promotion lists.

Plaintiffs do not object to, and specifically agree to comply with, an appropriate order from the court protecting the confidentiality of the information described in paragraphs one through seventeen. Upon receipt of this information, plaintiffs will evaluate it with due speed and

file a supplemental written response to defendants' motion, addressing the issue of whether the new procedure meets the specific requirements of the 1979 and 1981 decrees and relevant legal requirements.

Respectfully submitted,

/s/ DENNIS N. BALSKE

Dennis N. Balske
P.O. Box 2087
Montgomery, AL 36102-2087
205/264-0286
*Attorney for Plaintiffs*

**CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing have been served upon Ed Hardin, Rick Meadows, Cynthia Drabek, James S. Ward and John Bell, by U.S. First Class Mail, this 29th day of June, 1984.

/s/ DENNIS N. BALSKE

*Attorney for Plaintiffs*

# IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF ALABAMA NORTHERN DIVISION

---

## CIVIL ACTION NO. 3561-N

PHILLIP PARADISE, JR., INDIVIDUALLY AND ON BEHALF OF THE CLASS SIMILARLY SITUATED, PLAINTIFFS

UNITED STATES OF AMERICA, PLAINTIFF AND AMICUS CURIAE,

*v.*

BYRON PRESCOTT, AS DIRECTOR OF THE ALABAMA DEPARTMENT OF PUBLIC SAFETY, ETC., ET AL., DEFENDANTS

V. E. MCCLELLAN, ET AL., DEFENDANT-INTERVENORS.

**PLAINTIFFS' RESPONSE TO INTERVENORS' OBJECTION TO IMPLEMENTATION OF NEW PROMOTION PROCEDURE**

On June 27, 1984, intervenors filed a Response to Defendants Motion to Approve Selection Procedure for Promotion to Corporal, in which they asserted, *inter alia,* that the 1979 and 1981 consent decrees would have to be modified in order to comply with the Supreme Court's recent decision respecting bona fide seniority systems. Plaintiffs submit that intervenors' assertion is meritless and should be rejected.

Plaintiffs this data have filed their brief in the Eleventh Circuit Court of Appeals supporting this Court's Order of December 15, 1984. Section IV of the brief addresses the limited effect of the Supreme Court's recent decision on the case *sub judice.* It conclusively demonstrates the invalidity of intervenors' instant contention.

Rather than repeat the discussion of the limited effect of the Court's recent seniority decision here, plaintiffs have

attached a copy of the brief hereto and specifically incorporate it herein as its response to intervenors contention. For the reasons stated therein, intervenors assertions should be rejected.

Respectfully submitted,

/s/ DENNIS N. BALSKE

Dennis N. Balske
P.O. Box 2087
Montgomery, AL 36102-2087
*Attorney for Plaintiffs*

**CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing have been served upon Ed Hardin, Rick Meadows, Cynthia Drabek, James S. Ward and John Bell, by U.S. First Class Mail, this 29th day of June, 1984.

/s/ DENNIS N. BALSKE

*Attorney for Plaintiffs*

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

---

CIVIL ACTION NO. 3561-N

PHILLIP PARADISE, JR., ETC., ET AL., PLAINTIFFS

UNITED STATES OF AMERICA, PLAINTIFF AND AMICUS CURIAE

*v.*

BYRON PRESCOTT, ETC., ET AL., DEFENDANTS

V. E. MCCLELLAN, ET AL., DEFENDANT-INTERVENORS

**RESPONSE TO ORDER**

Comes now the defendant Personnel Board of the State of Alabama and does hereby respond to this Court's order of June 21, 1984.

The above-styled defendant has no objection to the use of the promotional procedure and believes that the procedure does not discriminate against any persons eligible for promotion to the rank of corporal within the Department of Public Safety.

Respectfully submitted,

CHARLES A. GRADDICK
*Attorney General*

By /s/ RICHARD N. MEADOWS
*Assistant Attorney General*

Address of Counsel:
Office of the Attorney General
250 Administrative Building
64 North Union Street
Montgomery, Alabama 36130
(205) 834-5150

**CERTIFICATE OF SERVICE**

I hereby certify that I have served a copy of the foregoing on the following:

Hon. Dennis N. Balske
1001 South Hull Street
Post Office Box 2087
Montgomery, Alabama 36103

Hon. Cynthia Drabek
Department of Justice
Post Office Box 23991
L'Enfant Plaza
Washington, D.C. 20026

Hon. James S. Ward
Ward & McKnight
2100 16th Avenue, South
Suite 302
Birmingham, Alabama 35205

by placing said copies in the United States Mail, postage prepaid.

DONE this the 27th day of June, 1984.

/s/ RICHARD N. MEADOWS
Richard N. Meadows
*Assistant Attorney General*

Address of Counsel:
Office of the Attorney General
250 Administrative Building
64 North Union Street
Montgomery, Alabama 36130
(205) 834-5150

IN THE DISTRICT COURT FOR THE UNITED STATES
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

---

CIVIL ACTION NO. 3561-N

PHILLIP PARADISE, JR., ETC., ET AL., PLAINTIFFS

UNITED STATES OF AMERICA, PLAINTIFF

*v.*

BYRON PRESCOTT, ETC., ET AL., DEFENDANTS

**RESPONSE OF THE UNITED STATES TO DEFENDANTS' MOTION TO APPROVE SELECTION PROCEDURE**

By its order of June 21, 1984, this Court directed the United States to respond to the defendants' motion seeking approval of their selection procedure for promotions to State Trooper Corporal positions. The United States response as follows:

1. Counsel for the United States first learned of defendants' selection procedure for corporal promotions on June 22, 1983, when she learned of the scheduled hearing on defendants' motion.

2. In a telephone conversation with defendants' counsel, Mr. Hardin, the undersigned counsel for the United States was advised generally of the selection procedure and its results, including the following facts:

a. The selection procedure included a written exam that, together with trooper performance ratings, was used as a screening device;

b. Troopers who passed the screening device were interviewed by a 3-member panel;

c. On the basis of the oral interviews, candidates were ranked in the following categories: best qualified, highly qualified, qualified, and unqualified;
d. Of the 256 troopers who applied and took the written test for State Trooper Corporal, 77 (30.1%) were black;
e. Of the thirteen troopers who were rated "best qualified", three (23.1%) are black;
f. All of the troopers rated "best qualified" are deemed equally qualified;
g. The Department of Public Safety believes it is unlikely that it will make promotions from this list beyond the "best qualified" group.

3. Based upon the above representations of counsel, it appears that the selection procedure, up to the point of identifying the thirteen "best qualified" candidates does not have an unlawful adverse impact. See, *Uniform Guidelines on Employee Selection Procedures,* 43 Fed. Reg. 38290, 28 C.F.R. 50.14 (1978), § 4D; *Questions and Answers to Clarify and Provide a Common Interpretation of the Uniform Guidelines on Employee Selection Procedures,* 44 Fed. Reg. 11996, March 2, 1979, Q & A #21. Accordingly, the United States does not oppose the defendants' motion to allow corporals to be promoted from their list of "best qualified" candidates.

4. The racial impact of the total selection process cannot be known until actual promotions are made from among the thirteen "best qualified" candidates. According to defendants' representations, the Director of the Department of Public Safety, under this procedure, has discretion to appoint any of the "best qualified" troopers for corporal vacancies that arise. The United States does not believe it is necessary to circumscribe the Director's discretion at this time. However, the actual selections of troopers to be promoted should be monitored closely to prevent any promotions that would result in unlawful adverse impact which would violate federal law or the orders of this Court.

Accordingly, the United States proposes that the defendants be required to identify to plaintiffs, including plaintiff United States, and the Court each trooper who is to be promoted to corporal no less than one week before the promotion is to take effect. If plaintiffs object to the proposed promotion, or if the Court so orders, the promotion should not take effect until the matter is resolved by the Court.

5. The United States has no information about the composition of the group of candidates rated "highly qualified" or "qualified." Therefore, it has no opinion whether promotions from those groups would comply with this Court's orders.

**CONCLUSION**

Based upon the representations of counsel, the United States believes that the procedure for identifying the thirteen "best qualified" candidates for State Trooper Corporal positions does not have an adverse impact and complies with the orders of this Court. The United States does not oppose the defendants' proposal to select corporals from the list of "best qualified" candidates. The United States submits that actual promotions of individuals selected from that list should not become of effective unless or until (1) one week has elapsed after notification to the Court and to plaintiffs of the individuals to be promoted and no objection has been filed, or (2) any objection having been raised, the Court has resolved the matter pursuant to such proceedings as it deems proper.

Respectfully submitted,

JOHN C. BELL
*United States Attorney*

By: _____
Kenneth E. Vines
*Assistant United States Attorney*

/s/ CYNTHIA DRABEK
Cynthia Drabek
*Attorney*
Post Office Box 23991
L'Enfant Plaza
Wash., D.C. 20026-3991
(202) 633-3415

**CERTIFICATE OF SERVICE**

I hereby certify that I have served the foregoing Response of the United States to Defendants' Motion to Approve Selection Procedure by mailing a copy, postage prepaid, to counsel listed below:

Mr. Dennis N. Balske
P.O. Box 2087
Montgomery, Alabama 36102-2087

Mr. Edward L. Hardin, Jr.
Post Office Box 1214
Birmingham, Alabama 35201

Mr. Richard N. Meadows
Ms. Rosa H. Davis
Assistant Attorneys General
250 Administrative Building
Montgomery, Alabama 36130

Mr. James S. Ward
1933 Montgomery Highway
Birmingham, Alabama 35209

This the 26th day of June, 1984.

/s/ CYNTHIA DRABEK

Cynthia Drabek
*Attorney*
Post Office Box 23991
L'Enfant Plaza
Washington, D.C.
20026-3991
(202) 633-3415

IN THE DISTRICT COURT FOR THE UNITED STATES FOR THE MIDDLE DISTRICT OF ALABAMA NORTHERN DIVISION

---

CIVIL ACTION NO. 3561-N

PHILLIP PARADISE, JR., ETC., ET AL., PLAINTIFFS

UNITED STATES OF AMERICA, PLAINTIFF

*v.*

BYRON PRESCOTT, ETC., ET AL., DEFENDANTS

**ORDER**

This matter is before the Court on defendants' June 19, 1984 Motion to Approve Selection Procedure for Promotion to Corporal. The Court has received written responses of counsel, it received documentary evidence presented by the Department of Public Safety and heard the arguments of counsel for all parties at a hearing on July 3, 1984. The Court having considered the evidence and arguments presented, it is now hereby ORDERED:

1. Subject to the limitations set forth in this Order, defendants Prescott, et al., are permitted to make promotions to State Trooper Corporal from the group of persons designated "best qualified" pursuant to the selection procedure described in defendants' June 19, 1984 motion.

2. Defendants Prescott, et al., shall select corporals from the "best qualified" group in a non-discriminatory manner. Defendants shall provide actual notice of such promotions to counsel for the parties not less than five working days prior to the effective date of such promotions. Such notice shall include the name and race of each person to be promoted and may include any other information defendants deem relevant. If no party files a timely

objection, the promotions designated by defendants shall take effect without further order of this Court. If a party files an objection at least two days prior to the proposed promotions, the promotions in question shall not become effective until the Court so orders, before or after resolution of the objection.

3. The one-for-one quota for corporal promotions, ordered December 15, 1983, shall not apply to the use of this selection procedure as described in paragraphs 1 and 2 of this Order.

4. The parties may proceed with discovery on the issue whether the selection procedure described in the defendants' June 19 motion can be validated as job-related pursuant to *The Uniform Guidelines on Employee Selection Procedures*, 28 C.F.R. 50.14, 29 C.F.R. 51.53, and thus shown to be in compliance with the 1979 and 1981 consent decrees, other orders in this case, and federal law.

5. The Court shall conduct further proceedings to determine whether the results of future administrations of the selection procedure presented by defendants Prescott, et al., or a similar procedure, may be used to select State Trooper Corporals without further review. Until further order of this Court, defendants shall make no promotions to State Trooper Corporal positions other than from the group they have identified as the 13 "best qualified" candidates.

DONE this 27th day of July, 1984.

[SIGNATURE]

United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR
THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

---

CASE NUMBER 3561-N

PHILLIP PARADISE, JR., ET AL., PLAINTIFFS

UNITED STATES OF AMERICA, PLAINTIFF AND AMICUS CURIAE

*v.*

BYRON PRESCOTT, ET AL., DEFENDANTS

V. E. MCCLELLAN, ET AL., INTERVENORS-DEFENDANTS

**NOTICE OF APPEAL**

Notice is hereby given that Defendants-Intervenors, V. E. McClellan, William M. Bailey, D. B. Mansell and Dan Davenport hereby appeal to the United States Court of Appeals for the Eleventh Circuit, from the Order entered in this cause on the 27th day of July, 1984, ordering defendant, Byron Prescott to make promotions to State Trooper Corporal. Defendant-intervenors further give Notice of Appeal of that portion of the Order which designates promotional procedures as set forth in the Paragraphs 1 and 2 of the Order.

Respectfully submitted,

CORLEY, MONCUS, BYNUM, & DEBUYS, P.C.

/s/ JAMES S. WARD

James S. Ward
*Attorney for Defendants-Intervenors*
2100 16th Avenue, South
Birmingham, Alabama
35205

**CERTIFICATE OF FILING**

I hereby certify that I have this date filed with the Clerk of the District Court of the United States for the Middle District of Alabama, Northern Division the original and seven copies of the foregoing Notice of Appeal, together with Seventy dollars ($70.00) for the filing and docket fees, and such other instruments as have been completed and included herein for service by the Clerk of a true copy thereof on each of the following:

1. Clerk of the United States Court of Appeals for the Eleventh Circuit together with the appropriate docket fee,
2. Counsel of record:

Ms. Cynthia Drabek
Attorney At Law
Room 5515 Main Building
Civil Rights Division
Department of Justice
Washington, D.C. 20530

Mr. Richard N. Meadows
Assistant Attorney General
250 Administrative Building
Montgomery, Alabama 36130

Mr. Dennis N. Balske
Attorney At Law
1001 South Hull Street
Montgomery, Alabama 36101

Mr. Edward L. Hardin, Jr.
Attorney At Law
Post Office Box 1214
Birmingham, Alabama 35201

Mr. Kenneth E. Vines
United States Attorney
Post Office Box 197
Montgomery, Alabama 36101

Dated this the 24th day of August, 1984.

/s/ JAMES S. WARD

Of Counsel
Corley, Moncus, Bynum, &
DeBuys, P.C.
Ash Place, Suite 300
2100 16th Avenue, South
Birmingham, Alabama
35205
(205) 939-0811

IN THE DISTRICT COURT FOR THE UNITED STATES FOR THE MIDDLE DISTRICT OF ALABAMA NORTHERN DIVISION

---

CIVIL ACTION NUMBER 3561-N

PHILLIP PARADISE, JR., ET AL., PLAINTIFFS

UNITED STATES OF AMERICA, PLAINTIFF AND AMICUS CURIAE

*v.*

BYRON PRESCOTT, ET AL., DEFENDANTS

V. E. MCCLELLAN, ET AL., DEFENDANTS-INTERVENORS

**INTERVENORS OBJECTION TO OPPOSED CORPORAL PROMOTIONS**

Come now the Intervenors in the above styled cause and hereby object to the proposed corporal promotions as outlined in the September 5, 1984 letter sent to counsel and the Court by the attorney for the Department of Public Safety. The Intervenors' objections are as follows:

(1) Intervenors adopt and incorporate herein by reference their Response to Defendant Prescott's Motion to Approve Selection Procedure for Promotion to Corporal heretofore filed in this cause on June 28, 1984.

(2) For that Intervenors herein adopt and incorporate by reference the grounds asserted in their Motion to Stay heretofore filed in this cause on or about January 6, 1984 and their Motion to Alter or Amend the Judgment of December 15, 1983 and to Stay its Reinforcement as Amended.

(3) For that Intervenors have filed a Notice of Appeal with the 11th Circuit Court of Appeals challenging this Court's Order of July 27, 1984. Under the circumstances this Court should abstain from approving any promotions

to Corporal until this Appeal can be heard. This Appeal will involve important and substantial questions of constitutional law and statutory construction concerning the recent U.S. Supreme Court case of *Memphis Fire Department, et al.* v. *Stotts* 52 U.S.L.W. 4767 (June 12, 1984). The importance of this case has not escaped the other parties to this litigation as there is presently pending before the 11th Circuit a request for the filing of an Amici Curiae brief concerning the applicability of the *Stotts* issue to the appeal by the parties of this Court's December 15, 1983 Order.

Respectfully submitted,

CORLEY, MONCUS, BYNUM, & DEBUYS, P.C.

/s/ JAMES S. WARD

James S. Ward
*Attorney for Intervenors*
Suite 300, Ash Place
2100 16th Avenue, South
Birmingham, Alabama
35205

**CERTIFICATE OF SERVICE**

I hereby certify this the 10th day of September, 1984, I served a copy of the foregoin Intervenors Objection to Opposed Corporal Promotions upon the following attorneys by placing a copy of the same in the United States Mail, postage prepaid and properly addressed:

Dennis N. Balske, Esquire
Post Office Box 2087
Montgomery, Alabama 36102

Richard N. Meadows, Esquire
Rosa H. Davis, Esquire
Assistant Attorney General
64 North Union Street
Montgomery, Alabama 36130

Mr. Edward L. Hardin, Jr.
Post Office Box 11328
Birmingham, Alabama 35202

Cynthia Drabek, Esquire
Department of Justice
Post Office Box 23991
L'Enfant Plaza
Washington, D.C. 20026-3991

/s/ JAMES S. WARD
Of Counsel

# IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF ALABAMA NORTHERN DIVISION

---

## CIVIL ACTION NUMBER 3561-N

PHILLIP PARADISE, JR., ET AL., PLAINTIFFS

UNITED STATES OF AMERICA, PLAINTIFF AND AMICUS CURIAE

*v.*

BYRON PRESCOTT, ET AL., DEFENDANTS

V. E. MCCLELLAN, ET AL, DEFENDANT-INTERVENORS

**MOTION FOR STAY**

Come now the Defendants-Intervenors in the above-styled cause, by and through their attorney of record, and respectfully move this Court to enter an Order staying the application of its Order of July 27, 1984 wherein Defendant Prescott is entitled to make promotions to State Trooper Corporal from the group of persons determined "best qualified" pursuant to the selection procedure described in Defendants' June 19, 1984 motion. As grounds for this motion, the Defendants-Intervenors set down and assign the following, separately and severally:

1. To allow promotions would effectively deny and infringe upon the Defendants-Intervenors' right of appeal in that other persons would be promoted and would be receiving the benefits of that promotion and not the Defendants-Intervenors.

2. The recent United States Supreme Court case of *Memphis Fire Department, et al.* v. *Stotts* prohibits quota promotion and expressly disallows schemes of promotion whereby blacks are promoted ahead of whites without any showing that the black was a victim of unlawful discrimi-

nation in employment. Since the previously entered Consent Decrees provide for quota promotion and blacks to be promoted ahead of whites without a showing that the black is or was a victim of unlawful discrimination in employment, any promotional scheme pursuant to those Consent Decrees is unconstitutional, in violation of Title VII, and the *Stotts* decision.

3. For that there is presently pending in the Eleventh Circuit Court of Appeals an appeal from this Court's Order of December 15, 1983 and from this Court's Order of July 27, 1984, that Order being the subject of this motion for stay. (The Eleventh Circuit Court of Appeals requested the parties to address the issue of whether this Court's Order of July 27, 1984 was final and therefore appealable. The parties have responded and as of this date the Eleventh Circuit has not indicated whether they will accept the appeal.) Both appeals will involve the interpretation, affect and applicability of the *Stotts* decision generally and to the facts of this case specifically. This Court should await direction and guidance from the Eleventh Circuit on these issues before allowing promotions to Corporal.

4. Presently at issue is whether the Corporal examination had content validity. If it is determined that the examination had content validity the allowing of promotions would mean that a quota based promotional scheme would be allowed when under any other circumstances an employer could promote on rank order rating based upon a content valid examination.

5. To allow quota promotion pursuant to an examination which has content validity, without any showing that blacks who would be preferentially treated by those quotas were victims of an unlawful discrimination, is in violation of the Constitution of the United States, Title VII and the *Stotts* decision.

6. To allow promotion based upon a promotional scheme accomplished pursuant to Consent Decrees en-

tered when the Defendants-Intervenors were not parties to this litigation, yet where those Decrees subsequently affect their rights to employment and career advancement, is unjust and severely encroaches upon their rights. *Memphis Fire Department, et al.* v. *Stotts.*

7. To allow promotion pursuant to a promotional scheme based upon the previously entered Consent Decrees in this case would be illegal, unreasonable, unconstitutional and contrary to public policy.

8. For that the Department promoted sixteen troopers to the position of corporal approximately six months ago and the Department has not promoted any other troopers to the position of corporal since the Order of July 27, 1984, that being almost three months. Under the circumstances, it would seem that further delay so that the Eleventh Circuit can decide the important and substantial issues raised on appeal would not unduly affect the administration of the Department of Public Safety.

WHEREFORE, PREMISES CONSIDERED, the Defendant-Intervenors pray that this Court enter an Order staying the operation of its July 27, 1984 Order.

Respectfully submitted,

CORLEY, MONCUS, BYNUM, & DEBUYS, P.C.

/s/ JAMES S. WARD

James S. Ward
*Attorney for Intervenors*
Suite 300, Ash Place
2100 16th Avenue, South
Birmingham, Alabama 35205

**CERTIFICATE OF SERVICE**

I hereby certify this the 25th day of October, 1984, I served a copy of the foregoing Motion for Stay upon the following attorneys by placing a copy of the same in the United States Mail, postage prepaid and properly addressed:

Dennis N. Balske
Post Office Box 2087
Montgomery, Alabama 36102

Richard N. Meadows
Rosa H. Davis,
Assistant Attorneys General
64 North Union Street
Montgomery, Alabama 36130

John C. Bell
U.S. Attorney
U.S. Courthouse
Montgomery, Alabama 36104

Edward L. Hardin, Jr.
Post Office Box 11328
Birmingham, Alabama 35202

Cynthia Drabek
Department of Justice
Post Office Box 23991
L'Enfant Plaza
Washington, D.C. 20026-3991

/s/ JAMES S. WARD
Of Counsel

# IN THE DISTRICT COURT OF THE UNITED STATES FOR THE MIDDLE DISTRICT OF ALABAMA, NORTHERN DIVISION

---

## CIVIL ACTION NO. 3561-N

PHILLIP PARADISE, JR., INDIVIDUALLY AND ON BEHALF OF THE CLASS SIMILARLY SITUATED, PLAINTIFFS

UNITED STATES OF AMERICA, PLAINTIFF AND AMICUS CURIAE

*v.*

BYRON PRESCOTT, AS DIRECTOR OF THE ALABAMA DEPARTMENT OF PUBLIC SAFETY, ETC., ET AL., DEFENDANTS

V. E. MCCLELLAN, ET AL., DEFENDANT-INTERVENORS

**ORDER**

For good cause, it is ORDERED that the defendant-intervenors' October 25, 1984, motion to stay this court's July 27, 1984, order be and it is hereby denied.

DONE, this the 25th day of October, 1984.

[SIGNATURE]

United States District Judge

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF ALABAMA,
NORTHERN DIVISION

---

CIVIL ACTION NO. 3561-N

PHILLIP PARADISE, JR., ET AL., PLAINTIFFS

UNITED STATES OF AMERICA, PLAINTIFF

*v.*

BYRON PRESCOTT, ET AL., DEFENDANTS

**ORDER**

This matter is before the Court on defendants' August 16, 1984 Motion to Approve Selection Procedure for Promotion to Sergeant. The Court has received written responses of counsel, it received documentary evidence presented by the Department of Public Safety and heard the arguments of counsel for all parties at a hearing on October 25, 1984. The Court having considered the evidence and arguments presented, it is now hereby ORDERED:

1. Subject to the limitations set forth in this Order, defendants Prescott, et al., are permitted to make promotions to State Trooper Sergeant from the group of 13 persons designated "most qualified" pursuant to the selection procedure described in defendants' September 10, 1984, submission.

2. Defendants Prescott, et al., shall select sergeants from the "most qualified" group in a non-discriminatory manner. Defendants shall provide actual notice of such promotions to counsel for the parties not less than five working days prior to the effective date of such promotions. Such notice shall include the name and race of each person to be promoted and may include any other infor-

mation defendants deem relevant. If no party files a timely objection, the promotions designated by defendants shall take effect without further order of this Court. If a party files an objection at least two days prior to the proposed promotions, the promotions in question shall not become effective until the Court so orders, before or after resolution of the objection.

3. The one-for-one quota for sergeant promotions, ordered December 15, 1983, shall not apply to the use of this selection procedure as described in paragraphs 1 and 2 of this Order.

4. The Court shall conduct further proceedings upon motion of a party to determine whether the results of future administrations of the selection procedure presented by defendants Prescott, et al., or a similar procedure, may be used to select State Trooper Sergeants without further review. Until further order of this Court, defendants shall make no promotions to State Trooper Sergeant positions other than from the group they have identified as the 13 "most qualified" candidates.

DONE, this 25th day of October, 1984.

[SIGNATURE]

United States District Judge

SUPREME COURT OF THE UNITED STATES

---

No. 85-999

UNITED STATES, PETITIONER

*v.*

PHILLIP PARADISE, JR., ET AL.

ORDER ALLOWING CERTIORARI. Filed July 7, 1986.

The petition herein for a writ of certiorari to the United States Court of Appeals for the Eleventh Circuit is granted, limited to Question 3 presented by the petition.